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No. 91-5843

In The

Supreme Court of the United States

October Term, 1991

DENNIS SOCHOR,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Writ Of Certiorari
To The Florida Supreme Court

JOINT APPENDIX
VOLUME II

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* * *

[949] October 21st, 1986, at which time the following proceedings were had:)

THE COURT: There is no rule at this time?

MR. HANCOCK: Yes.

THE COURT: Are you ready to proceed?

MR. HANCOCK: Yes, Judge. Just for the record, Mr. Rich and I have discussed the sentencing phase, and I have told him what evidence that we're going to put on, and which ones that we will argue, and out of those, I've indicated to him that we would argue number two, number four, number eight, and number nine, and Mr. Rich requested to argue number one, for the mitigating circumstances, number two, number four, number five, number six and number eight.

MR. RICH: Also, Your Honor, through stipulation, we would put in – I have copies of them too, Your Honor – all of the medical reports. By Stipulation, we would put those in, too.

MR. HANCOCK: I don't have anything written on mine, but I do have a couple of places underlined.

MR. RICH: I think I got mine. It may not be underlined. These are all clean copies. We [950] should make clean copies of those things. Go ahead put the clean copies in.

MR. HANCOCK: State's ready, Your Honor.

MR. RICH: Defense is ready.

THE COURT: Bring the jury in, please. Good afternoon, members of the jury. Counsel concede the presence of the jury and waive their polling?

MR. HANCOCK: Please the Court, State does.

MR. RICH: Yes, Your Honor, please.

THE COURT: Ladies and gentlemen of the jury, you have found the defendant guilty of murder in the first degree, and the punishment for this crime is either death or life imprisonment, without the possibility of parole for twenty-five years.

Final decision as to what punishment shall be imposed rests solely with the judge of the this court. However, the law requires that you, the jury, render to the Court an advisory sentence as to what punishment should be imposed upon the defendant.

The State and the defendant may now present evidence relative to the nature of the [951] crime and the character of the defendant, and you are instructed that this evidence, when considered with the evidence you have already heard, is presented in order that you might determine first, whether sufficient aggravating circumstances exist that would justify the imposition of the death penalty, and second, whether there are mitigating circumstances sufficient to outweigh the aggravating circumstances, if any.

At the conclusion of the taking of the evidence and after argument of counsel, you will be instructed on the factor is in aggravation and mitigation that you may consider.

State wish to present some evidence?

MR. HANCOCK: Yes, we would, Your Honor. With your permission, we will first call Patricia Neil [sic].

Thereupon, the State of Florida, to maintain the issues on their part to be maintained, called as a witness, PATRICIA NEAL, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANCOCK:

Q Please state your name and spell your last [952] name.

A Patricia Ann Neal, N-e-a-l.

Q And ma'am, where do you live?

A Fort Campbell, Kentucky.

Q Did you know an individual by the name of Dennis Sochor?

A Yes.

Q Can you please tell the ladies and gentlemen of the jury how you knew him?

A I was married to him.

Q Can you tell us how long you were married to him for?

A Approximately one year. Well, we were together one year.

Q Now, let me show you State's Exhibit A for identification and ask you if you recognize that.

A Yes, that's a picture of me.

Q Was that when you were married to him?

A Right.

MR. HANCOCK: At this time, we respectfully ask that this be introduced in evidence, State's Exhibit A.

MR. RICH: No objection.

THE COURT: Maybe [sic] received.

THE CLERK: State's Number One.

[953] Q (By Mr. Hancock) What color hair did you have back then, when you were married to him?

A Light brown, blond, somewhere around there.

Q And this picture resembles the way you looked back then; is that correct?

A Yes.

Q Now, where did you live with him at?

A In Italy.

Q How long did you live in Italy for?

A About a year and four months, maybe.

Q And how did he treat you?

A Not well.

Q What do you mean by that?

A The marriage was quite violent.

Q And when did it start becoming violent?

A The first time that Dennis was really violent with me was New Year's Eve of '74.

Q And after that, then there came certain incidents that occurred; is that correct?

A Yes.

Q Did there ever come an incident where he grabbed you by the neck, the throat?

A Yes, one time he did.

Q Can you tell us about that, if you would, [954] please?

A We were having an argument about something, and he was slapping me around back and forth, and I reached out and slapped him back, and it made him mad, and he just went for my throat and shook me, until I guess he thought I had enough, and then threw me down on the floor.

Q And how many times were you assaulted by Dennis Sochor?

A I would say at the least, thirty times in the year.

Q And attempted to try and black that out since you remarried; is that correct?

A Yes.

Now, what would happen if you objected to his sexual preferences, behavior?

A Dennis usually got his own way. If he wanted sex, he got it because he would get violent, if he didn't get it, so I didn't usually fight him off.

Q What would happen when he would get violent?

A When Dennis got violent, he usually – his eyes would kind of glaze over, and he would just get wild.

Q Can you describe the way his eyes would [955] look when he would get wild?

A They would just kind of glaze over, and he just – it was just a real violent look, anger.

Q Now, can you describe his temper, if you would?

A Dennis' temper was very violent. When he got mad, he just went after anybody that was around that he could take it out on.

Q Now, back in the time you were married with him, and when he would become angry and violent, as you've testified, was he ever under the influence of alcohol during those times?

A Not usually.

Q And back then, he wasn't drinking, would that be a fair statement?

A Yes. We would go out once in a while, but it wasn't constant drinking, no.

Q So, he would have this behavior, even when he wasn't on alcohol, would that be a fair statement?

A Yes.

Q And who was his father and mother, their names?

A Charles Sochor, and I forget his mother's name, sorry.

Q And can you describe the family, if you [956] would, real briefly?

A They are nice people. They treated me real well.

Q And besides this violent behavior, did anything else occur in Italy?

A Well, Dennis would disappear at night. I didn't know where he went. I would get up in the night, and he would be gone, and sometimes he would come in at two or three in the morning, sometimes later. One time he went out to the car and slammed the door and the trunk flew open, and there was a lot of purses in the car, and I asked him where he got them from, and he said he got them from the whores.

Q That was eventually another reason why you divorced him is that correct? Was that one of the reasons?

A It was a mutual thing. We just both decided on divorce.

MR. HANCOCK: Thank you very much. Thank you, Your Honor.

MR. RICH: Thank you. May it please the Court.

CROSS EXAMINATION

BY MR. RICH:

Q You testified, Ms. Neal, that he would get [957] violent with you, and he would slap you around about thirty times in the first year; at least once a month, you'd get slapped around?

A I would say so, yes.

Q And while in the service at the time, did you ever attempt to get some psychologist to look at Dennis? Did you complain to any of the medical people there about his behavior?

A One time, we went in for counseling, marriage counseling.

Q Was it a psychiatrist or marriage counseler [sic], psychologist in the Army that discussed it with you?

A I am not sure. I think a psychiatrist, but I'm not sure.

Q But it was in Italy?

A Yes.

Q Did the psychiatrist at that point advise y as to what kind of problems Dennis has?

A No.

Q Did they recommend that he go into the hospital for any type of care, psychiatric care?

A No.

Q Did you think that maybe he might need psychiatric help and care, is that why you went?

[958] A No, I Just wanted the marriage to be better.

Q You didn't think there was anything unusual about his behavior at that point?

A I don't know. I kind of just – I put up with it. I figured most – you know, I just put up with it.

Q This one occasion he choked you, had he been drinking?

A No, not at all.

Q And these violent fits of temper, he had never been drinking? He didn't have a drinking problem, while he was in Italy?

A No.

Q How about a drug problem, while he was in Italy?

A Not a drug problem, but he did smoke hash.

Q What is hash, do you know? It's a narcotic drug; right?

A Yeah, a drug.

Q How often would he smoke hashish, if you know?

A I don't really know. I would say once a week, or just whenever it was there.

Q Was it readily available to him, hashish?

[959] A Yeah.

Q You, yourself, didn't use hashish, did you?

A I tried it, yes.

Q I hope that Statute of Limitations has run on that. It was when, back in seventy-four?

A I hope so, too.

Q So, all these behaviors and all these things, you just went to the psychiatrist once?

A Yes.

Q And he didn't recommend that Dennis have any psychiatric evaluation or anything like that?

A No.

Q And you never went back?

A No.

Q And nothing ever came, other than that one evaluation, one time that you went to the psychiatrist?

A No, we didn't go back.

Q You didn't go back.

A No.

Q Did the psychiatrist say that you should come back?

A I think so, yes.

Q Did the psychiatrist advise you that Dennis had problems that needed to be treated?

[960] A No.

Q Back in seventy-four?

A No.

Q Now, you say he choked you. That only occurred on one occasion?

A Right, one time.

Q When was that?

A When was it?

Q Yes.

A As a date?

Q What year?

A It would have been in seventy-four.

Q And –

A It could have been seventy-four, seventy-five. We were sent overseas the end of seventy-four. We were there for the year of seventy-four. We were there for the year of seventy-five, so it must have been seventy-five, yes.

Q Then after that particular incident, how did he react, after it occurred, let's say like the next day?

A Like nothing ever happened. It was usually either like nothing ever happened, or else he would be real nice to me, and it would be forgotten.

Q How about all these other incidents, all these assaults, how long would it be that he would act [961] like nothing had happened? Would it be a matter of days? Would it be a matter of much hours or what?

A It would just be forgotten about.

Q How soon?

A How soon?

Q Yes.

A Usually right away. Usually, he went out afterwards. Like after the choking incident, he went out right afterwards, and then it was –

Q How long was he gone?

A Most of the night.

Q When he came back the next day, he acted as if nothing had happened?

A As if nothing had ever happened.

Q Was it a similar situation with all the times that he assaulted you?

A Yes.

Q The next day, he would act like nothing had happened?

A Yeah. It usually was never talked about.

Q I hate to get too personal, but when you had sexual relations, was he ever violent to you?

A Only if I resisted.

Q And you figured it was just –

A I didn't resist.

[962] Q Why, could you be a little more specific? What would he say, or what would he do, if you resisted?

A He would just get mad and say that –

Q He didn't beat you though, did he?

A Well, not beatings, because I didn't usually resist long enough for him to get that made [sic]. There was one incident where I resisted him. We were in a tent, and there were a lot of people around, so I thought well, I might be able to get away with this because there was a lot of people around. He wouldn't beat me in front of these people, but I was laying on my side, and he come

up behind me and slugged me in the stomach at one point, where it knocked the air out of me, and I just gave in. It was easier.

Q But all these assaults, you only went to the psychiatrist once for help?

A Yes.

Q Did you personally feel that Dennis had problems, psychiatric problems, that needed to be taken care of?

A I blamed a lot of it on myself. I felt like it was a reflection of me, that I was doing something wrong, because he was beating on me.

Q Well, could you tell us what you felt that [963] you were doing wrong that –

A I didn't know because sometimes I didn't know why he was mad.

Q When did you divorce Dennis, do you remember?

A I came back to the State's in June of seventy-six, filed for divorce, when I had the money for it, and I think it went through in seventy-seven, early seventy-seven.

Q And it was a mutual divorce? It wasn't a nasty divorce? It was by mutual consent?

A Right.

Q Now, when you say his eyes used to glaze over, did he appear to you at that particular point to be crazy sometimes? Is that the way you describe it?

A Well, no.

Q Isn't that the way you described in your statement, his eyes –

A They didn't glaze over like –

Q I think your words were that he acted kind of crazy, and he got real eary [sic].

A Eary [sic], that's the word I was –

Q You didn't use the word crazy?

A Eary [sic], crazy. It's hard to describe.

Q Like a psychotic look?

[964] A Yeah, I guess you would say.

Q The whole time that you were married to him though, Dennis never assaulted anyone else, that you know of? There was no charges or any charges filed or anything like that?

A No, not that I know of.

Q If there would have been charges filed, you would have known about it?

A Yes.

MR. RICH: I have no further questions.

REDIRECT EXAMINATION

BY MR. HANCOCK:

Q Did he ever come back with any marks on his body, after he had been out all night?

A Yeah, one night he did. He came back with scratches on his face or his face was scratched up. He went out for a run.

MR. HANCOCK: Thank you very much.

RECROSS EXAMINATION

BY RICH:

Q Let me ask you one question. He was a jogger, he did a lot of jogging, when you say he went out for a run?

A Yes, that's what I said.

Q He didn't explain to you that he ran into [965] some thorn bushes, and that's how he got is [sic] face scratched up?

A Yes.

Q Did it look like he was scratched by thorn bushes?

A No, sir.

Q Is that what he told you?

A That's what he told me. At the time, I believed him.

Q You believed him at the time. You don't believe him now?

A Well, when I came back to the States, I asked him about it, and he said no, that he had tried to snatch a purse from one of the whores, and she had gotten ahold of him.

Q So, he had a habit of stealing purses from whores?

A Yes, sir.

Q Never assaulted them, just stole purses?

A I don't know.

MR. RICH: I have no further questions.

MR. HANCOCK: Thank you for coming today.

MR. HANCOCK: We call, Your Honor, with your permission, Dr. Ronald Wright.

(Thereupon, the State of Florida, further [966] to maintain the issues on their part to be maintained, called as a witness, DR. RONALD WRIGHT, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. HANCOCK:

Q Please state your name and spell your last name, sir?

A Dr. Ronald Wright, W-r-i-g-h-t.

Q And what's your occupation or employment, sir?

A I am a forensic pathologist.

Q What is that?

A It's a Doctor of Medicine, who specializes in pathology, primarily the specialty having to do with the diagnosis of disease, and then further specializes in

forensic aspect, which primarily has to do with the determination of the cause of death of people who die suddenly and unexpectedly, who are thought to die as a result of some kind of injury.

Q Where are you employed now?

A The University of Miami, School of Medicine, which has a contract with Broward County based upon my appointment by the Governor as the District Medical Examiner of District 17 of the State [967] of Florida, which happens to be Broward County.

Q You are the Chief Medical Examiner for Broward County; correct?

A Right.

Q Now, have you had occasion to deal with cases that involve a choking death?

A Yes, I have.

Q And what is the cause of death on those, the legal term?

A Well, asphyxiation is the term which we tend to use.

Q Can you tell us how death occurs?

A Well, basically what occurs in that kind of death, which is often called a manual strangulation, which the technical term for a choking, as to interfere in a material way with the getting of oxygen down through the throat. This is done by compression of the structures in the nect [sic] or a squeezing of them, accompanied with either

fracturing or bending the skeleton of the next [sic] structures.

When that is done, there is a loss of new air into the lungs, and then after a period of time, there is a loss of ability of the body to stay alive. Oxygen, which is in the air which we breathe, is required to continue the chemical reactions which make [968] up life.

Q Now, you dealt with that on numerous occasions with this cause of death; is that correct?

A Yes, I have.

Q And you have even had occasion to talk to people who have been choked before and survived?

A That's correct. I have treated individuals in my background as an emergency room doctor who have been strangled, but not to death, I've dealt with a number of other cases of individuals that it this has happened to.

Q Is it a slow death?

A Yes, it is, relatively speaking.

Q Why is it a slow death?

A Primarily because the length of time, which is required when one loses oxygen supply of the body, does have some limited ability to continue certain processes without oxygen. For instance, on an average, the heart will continue to beat ten to fifteen minutes after its oxygen supply is deprived. It therefore makes things take a relatively long period of time if one defines death on the basis of loss of hearbeat for instance, it is relatively slow.

Q How about as to pain, how much pain is involved in a choking death?

[969] A Obviously, pain is dependent upon the perception of the individual. I can talk about that in regard to the sort of things which are possible, how that will be interpreted by the individual obviously varies from person to person. There are two major components. Number one, the pressure on the nect [sic] causes bending and tearing of the skeleton of the neck structure. That is painful at the time, as any tearing and sending of messages to the brain.

Also, there is the feeling of the inability to get one's breath, which is extremely frightening, too. Ordinarily, there is a strong desire by people to continue to breathe, and that when they can't do that, it causes a panic reaction ordinarily.

Q Now, you have had occasion to read some of the statements in this case that the defendant gave to Captain Schlein; is that correct?

A That's correct.

Q And you base some of these opinions on those; is that correct?

A That's correct.

MR. HANCOCK: Thank you, Dr. Wright.

CROSS EXAMINATION

BY MR. RICH:

Q Of course, you never had the opportunity [970] Doctor, to exam the body in this case?

A No, I did not.

Q So, you don't know if there was any tearing of the vertebrate or rupture of the vertebrate?

A No, I do not.

Q And you certainly don't know the length of time it took where there was excruciating pain, as a result of this choking?

A I can tell you the minimu [sic]. I can't tell you the maximum.

Q Is it possible to just choke somebody and kill them, without breaking the vertebrate and without breaking the neck?

A Yes, it is. The younger a person is, the more unlikely it is that the major bone – there are a couple of different bones that – or cartilages which are involved here. One is the hioid (phonetic) bone, and in the case of the young lady here, it would be highly unlikely, in my opinion, that there would be a breaking of that bone. It would just bend. You have to be as old as I am.

Q Or me.

A Or whatever, to have that one break. The cartilages on the back of the thyroid cartilage, which is the voice box, the back end of it will also, in [971] somebody

that is young, generally just bend, tearing muscular attachments and will not break.

Q So, you have no way of knowing the length of time it took to effect the death of a person by this choking in this case, no way you could possibly tell?

A Actually you can. There are a couple of minimums.

Q What's the minimum?

A Thirteen seconds. Thirteen seconds is the length of time that the brain continues to function, after you constrict all the blood supply to it. I don't know if it is possible to do that with a manual strangulation, there being four blood vessels, two of which one of the back inside of the vertebrate column. That's a little hard to restrict. That's that absolute minimum of loss of consciousness. The maximum period, obviously I don't know because you can –

Q Choke and let up and choke?

A Right, exactly.

Q In reading the reports, did you read also the statements of Gary Sochor?

A I did not see those, no, sir.

Q Just the statements of Dennis Sochor?

A That's correct.

Q And if Gary Sochor said that this took [972] place very quickly, would there be an excruciating amount of pain and suffering as a result of a very quick choking?

A No. It would be possible to product unconsciousness very rapidly in a person who had previously exercised, under that set of circumstances in which there is all ready [sic] a shortness of breath, unconsciousness can be within that thirteen or very close to that thirteen second period of time.

Q How about if someone was exerting a lot of physical exertion or using a lot of physical exertion in a power struggle?

A That's the sort of thing, if that was enough that she would have been short of breath to start with from the exertion, that will shorten considerably the lenghth [sic] of time it takes to produce unconsciousness. Death is not shortened nearly as much, but the period to unconsciousness is.

Q Well, if a person is placed unconscious, then within a short brief span then there wouldn't be much pain?

A None.

Q There would be no pain?

A Not during that period of unconsciousness.

Q So, it's very possible, with a reasonable [973] degree of medical probability, say that this could be a very quick death without much pain?

A It could be very quick without pain. The death always takes a little bit longer.

Q What I am talking about, the unconsciousness would ensue very rapidly?

A Yes, that is correct. It is in that hypothetical which you gave of the exertion which would cause shortness of breath prior to the onset of the choking the unconsciousness could occur fairly rapidly within a matter of thirteen seconds being the absolute minimum, probably more like somewhere closer to a minute.

Q So, again during that unconscious period, there would be absolutely no pain?

A That's correct.

MR. RICH: Thank you, Doctor.

MR. HANCOCK: Just to [sic] questions, Your Honor.

REDIRECT EXAMINATION

BY MR. HANCOCK:

Q You said that usually it could be closer to a minute?

A Yes.

Q So generally, it would take a minute, [974] before they would become unconscious; is that correct?

A That's correct, in somebody who's already short of breath.

Q And if they are not short of breath, it might even take longer than that; is that correct?

A About four minutes for unconsciousness, if they are not.

Q If someone is resisting and struggling and fighting and screaming and begging for their life, resisting the choking, then that could even take a longer period of time; is that correct, depending on how much resistance was put up?

A That's correct. You start the clock again, all be it a slightly shorter clock every time that there's a release of the pressure on the neck, if another breath is gasped, you start the clock running again because you resupplied the body with oxygen. It shortens it a little bit because again, this shortness of breath that occurs.

MR. HANCOCK: Thank you, Doctor.

MR. RICH: Thank you, Doctor.

MR. HANCOCK: We next call Captain Mark Schlein, Your Honor.

THE COURT: I suppose he is still under oath. Go ahead and swear him again, just to [975] make sure.

(Thereupon, the State of Florida, further to maintain the issues on their [sic] to be maintained, called as a witness MARK SCHLEIN, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. HANCOCK:

Q Now, Captain, you testified previously in the guilt phase; is that correct?

A Yes, sir.

Q Now, you indicated that taped statement you had taken from him, the Court had ordered certain portions taken out; is that correct?

A Yes.

Q And what portions were taken out of that tape?

A Specifically those that are addressed to prior rapes that Dennis had committed and confessed to it at the same time. One occurred in Fort Lauderdale for which he had been convicted, and the earlier one was a Michigan rape, which he also confessed to on the statement, which was requested to be deleted.

Q And the one in Michigan, do you know when that occurred?

A Yes, it occurred in August of 1979 in and [976] around Pontiac, Michigan. Dennis met a young lady at a bar, and engaged her in conversation, asked her if she would be nice enough to drive him home. She asked if he lived in the immediate area. He said yes. They got into his car. He proceeded to give her some directions, and she began driving. During the drive, he began to embrace and kiss her, while she was behind the wheel. She resisted. She was then choked to unconsciousness. When she woke, he again, according to her sworn statement, she was nude. She had deficated [sic] in the car and on herself, and he was, in fact, raping her. When the rape was completed, they continued to his house, where she was bought [sic] inside, allowed to take a shower and was raped two more times, and in addition, was forced to commit an oral sex act.

Q And now, you investigated this case; isn't that correct, and had the reports from Michigan?

A Yes, we had all this information prior to actually finding Dennis in Dekalb County, Georgia.

Q In fact, he was a fugitive on that one?

A Yes, he was a fugitive from justice on that case, and that case is still pending against him.

Q Now, with permission of Judge Seay, can you play the rest of the taped statement, if you would? I think it's only about ten minutes.

[977] (The following is a tape-recorded statement played in open court, which portion of the record is not certified as to accuracy or content:)

"The following will be a tape recorded statement.

Q When did you first get to Atlanta?

A Actuall [sic] two years ago.

Q And prior to coming to Atlanta, where were you living?

A In New orleans, [sic] Louisiana.

Q And prior to New Orleans, where were you living?

A Fort Lauderdale.

Q I'd like to ask you if you have ever been in trouble with the low or arrested before?

A Yes.

Q Was one arrest in the State of Michigan?

A Yes.

Q And what was the charge in that case?

A Rape or aggravated something, I'm not completely sure.

Q Okay.

[978] A Well, it was more than that, there was, you know, drunk, public drunk arrest.

Q I want you to think back and tell me about that incident that happened in Michigan because I think it's important. What happened in Michigan with that particular girl that they charged you with raping? Where did you meet her?

A I met her at a bar. I was out with three friends. We went to a concert and then we came to a bar, and we were sitting down just drinking, talking, my two friends. They were both male, and then I started talking to one girl, and we got going and talking and this and that and somewhere along the line, my buddies were ready to leave, and the girl said well that's all right. I'll take you home, so she did.

Q She took you to your house?

A Yes, the place I was staying.

Q Do you remember where that was?

A It was in the country, someplace outside of Pontiac. I can't remember. I don't remember the road.

Q Was it on apartment or a house?

[979] A No, I was a stable boy, so it was more of an apartment.

Q It was on a horse type ranch?

A It was on a horse ranch, yes.

Q Ok.

A It had a full kitchen layout.

Q I see. The girl drove you home, then tell me what happened.

A I was, I know I was quite drunk after the concert and the bar, but we started talking about, you know, sex or something, having sex later that night cause I guess I felt that was one of her intentions of her driving me home, as I was with my friends at the bar and already had a ride.

Q You felt that because she drove you home, she basically was sort of suggesting to you that she wanted to have sex with you?

A Yes.

Q What happened when she got you to the house?

A Well, what happened then was that I couldn't understand. She didn't want sex this evening.

Q She said no?

[980] A Yes.

Q Then what happened?

A Well, I just thought it was more of a tease, and I, you know, kept trying to talk her into it, and she was

insisting no, I guess, and from then on, there was a point where –

Q What happened when she said no? What happens when a girl says no to you? What happens to you, what happened then?

A Not always, but this aprticular [sic] time, it was just an inner feeling, something, I don't know, a different kind of a take over in me. I didn't feel as part of me, but that's you know, these actions were coming from me.

Q Something inside you?

A Yes.

Q What did it make you do?

A It made me want to have sex more then, you know, anything else probably in the world at that time.

Q And what did you do?

A And I forced myself, forced her to have sex with me.

Q Do you remember seeing any visual signs that she'd been hurt, on her body or her [981] face?

A Yes.

Q What did you see?

A I seen choke marks.

Q What did you think, what did you think when you were choking her into having sex with you, what were you thinking, what was happening to you?

A Nothing. I don't – I couldn't think nothing.

Q Why couldn't you think?

A I don't know why I couldn't think. It was all I can relate to it like an airplane jump, my first airplane jump. There was no feeling, no emotion. I don't know if you ever jumped out of an airplane, but my first jump was out of a jet, and it's like now I know I'm existing right here sitting in this chair, but at that point, I wasn't existing.

Q After the rape was over, and you choked her and force her into having sex, did you feel anything?

A At the particular time, it was over because I passed out, but when I awoken [sic], and she was still in the room, it was early morning, and [982] I couldn't understand why she'd be there because when I woke up I, you know, did recall that, you know, something bad did happen last night, and I was soothing and somewhat trying to be loving and apologetic, and I went out a got a can of gas and put it in her car cause she said she didn't have gas, and she left.

Q When was the next time you remember being arrested for this kind of a problem, this kind of a charge?

A Well, about, the next time was in Florida, Fort Lauderdale. I'm not sure about the time, maybe eight months later.

Q Okay. Let's think back to that incident. Was there a bar involved?

A Yes.

Q You met a girl in the bar?

A Yes.

Q Describe what happened.

A It was the same type thing where we discussed that I had some drugs, which I did not.

Q She wanted to know if you had any?

A Yes.

Q Okay, go ahead.

[983] A And then we left, and when she found out I didn't have any drugs, well, she talked of having sex, and when she found out I didn't have any drugs, she didn't want nothing to do with that, and similar to the same type thing that happened the first time.

Q Well, when she said no, in other words, you went from the bar to where you were living?

A Yes.

Q And what kind of place was it that you were living?

A Oh, it was a house trailer.

Q And how did you get from the bar to the house trailer?

A In her car.

Q You got to the house trailer, and she decided she did not want to have sex. She said no; is that correct?

A That's correct.

Q What happened at that point, when she said no. What happened to you? Describe what happened?

A That same type feeling of – it's difficult because the feeling is something I [984] don't know what it is, but there is something in here that has more control over the situation than I do.

Q Something tells you what, that you need to have sex?

A Yes, but it's more than that. It's – but I have had these urges with, on many number of times, but I passed the urge up.

Q You manage to fight it?

A Or just release it. Or this time it was a point that there was, you know, a part of me that was like arguing with me, saying you know, no don't do this.

Q What did you do?

A But at this instant the urge came where I just didn't have no control and hold back and –

Q And what did you do?

A Then I forced her to have sex.

Q In, was it, and how did you force her, in what fashion?

A It was more just, you know, grab and pull.

Q Wree [sic] you choking her, too?

A I don't believe so, no.

[985] Q Was she saying no, struggling against it?

A Yes, at first, but then she went along.

Q After you sort of overpowered?

A Yes."

(Thereupon, the tape-recorded portion was concluded.)

MR. HANCOCK: That's all the questions I have, Your Honor. Thank you.

CROSS EXAMINATION

BY MR. RICH:

Q This second rape incident here, that's the one he was placed on probation for here in Broward County?

A Yes, sir.

Q Do you know what kind of probation he had, Captain? Was it five years?

A I honestly don't know. I know he was placed on probation.

Q And this first case is still pending in Michigan; right?

A Yes, sir.

Q Those two people that you indicated, of course, are still living; right?

[986] A Yes, sir.

Q In all of these occasions where he described this behavior, he is always in a bar where he had been drinking; right?

A The situations that I'm aware of involved a bar.

Q In the first instance, he told you he was very drunk? The one in Michigan, he said he was very drunk?

A Yes, he did.

Q And even the second incident, he said he was in a bar, and he was drunk?

A The second incident, he said he was in a bar.

Q Didn't say he was drunk?

A I don't he was real clear though.

Q He was in a bar, though?

A The bar is essential to the scene, those three cases, yes.

Q And in the first one – in fact, in each one, he describes to you that something comes over him that he cannot control?

A Yes.

Q Have you read the psychiatric reports in this case, Mark?

[987] A I haven't read the psychiatric reports, no, sir.

Q But in each instance, he says this irresistable [sic] impulse comes over him that he can't really control?

A Yes.

Q And that later on, when he sobers up or the next morning or the next day, he is extremely sorry and extremely repent about it?

A He basically said he gets these urges. Sometimes he doesn't, but he suggests that he is sorry, yes.

Q And the statement further on in this case, he describes this irresistable impulse that comes over him that he can't control, and that he's drinking?

A Sometimes.

Q Even in this case.

A Sometimes it's irresistable, sometimes it's not. Fortunately, it's not always irresistable, but when he can't control, we see what happens.

Q It always seems to stem from drinking?

A Well, the cases that I'm involved with involve a bar, yes.

Q His motis operendi [sic] seems to involve drinking and no control, an irresistable impulse, and [988] then repentance afterwards? That seems to be the MO.

A That's a compound kind of a statement, but –

Q Well, you're a lawyer, so you know what I am talking about.

A Certainly he meets women in the bar. He gets this urge. If they resist, he rapes them, and sometimes kills them.

Q Well, you only know of one homicide.

A That I know of, yes.

Q You don't suspect any others, no evidence of any others?

A I don't know of any others.

Q And he's indicated to you in his statement he was only able to control this for the last five years he has been on the run?

A He indicated one incident in Atlanta that he was able to control it, and we have no evidence charging him with any other crimes there.

MR. RICH: Thank you very much.

MR. HANCOCK: Thank you very much. We next call, Your Honor, with your permission Detective Vicki Russo.

(Thereupon, the State of Florida, further to maintain this issues on their part to me maintained, [989] called as a witness DETECTIVE VICKI RUSSO, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. HANCOCK:

Q Please state your name and spell you last name.

A My name is Vicki Russo, R-u-s-s-o. I work for the City of Fort Lauderdale Police Department.

Q And how long have you worked with the Fort Lauderdale Police Department?

A Over fourteen years.

Q And what's your duties presently consist of with the Fort Lauderdale Police Department?

A I'm a detective in the homicide squad.

Q Now, I take your attention back to March of 1980. What were you duties?

A I was in the homicide squad, but at that time, we also worked sexual batteries.

Q And did you have occasion to become involved in an incident that brings you here to testify?

A Yes, I did.

Q And can you please tell the ladies and gentlemen of the jury when you became involved?

[990] A It was on March 14th, 1980.

Q How did you become involved on March 14th

A I arrived at work that morning approximately eight o'clock a.m. I was advised by communications that there was a sexual battery victim at the Sexual Assault Treatment Center, which at that time was in Pembroke Pines, Broward County, Florida. I responded out to the center and met with a victim by the name of Rhonda Rowe (phonetic).

Q Can you describe her, if you would?

A She was a small girl, about nineteen years old, about five foot two, very petite, had blond curly hair, a little bit past the chin, very, very cute girl.

Q Now, looking at State's Exhibit 27 in evidence, I ask you to look at that and does that resemble Rhonda Rowe?

A You can see that her eyes were blue, and Rhonda Rowe's eyes were blue.

Q How old was she?

A Nineteen.

Q Where was she from?

A She was from – originally, she was from New Jersey, but she has had family in Connecticut.

Q What was her physical condition when you came in contact with her?

[991] A Very, very emotionally upset. She was crying, shaking, very fearful. It took me a while to calm her down. I did subsequently bring her back to the police station.

Q And what type of clothes did she have on at that time?

A She just had on some clothes that were given to her by the Sexual Assault Treatment Center because she had no clothes available to her at that time.

Q And as a result of your investigation, what did it reveal happened?

A She had been at a bar by the name of Duck Goose, which is in the thirty-five hundred block of Northwest Ninth Avenue, which is in the City of Oakland Park, Broward County, Florida. She had been there the previous evening, March 13th, with her boyfriend. They had been playing pinball, and she went out to her car to put her purse away, lock it up in the car, and to go back in the lounge, and as she walked out of the lounge, she noticed a white male laying on the sidewalk there in front of the bar. She assumed he was passed out, really didn't pay much attention to him, walked around him.

As she did, this white male said, "Hey, [992] Sweetheart." She ignored that, continued on to her car, unlocked the driver's door, and was putting her purse in the front seat of the car when the next thing she knew there was this white male behind her choking her and pushing her into the vehicle.

Q Where was he choking her at?

A Around her neck.

Q What did she say happened?

A She said she was forced in the car, and this white male threatened to cut her, stab her, pushing her into the car. He took the keys out of her hand, started the car up. She tried to beep the horn and didn't succeed, to get someone's attention, but no one came to her aid.

The car started up. She attempted to get out of the passenger side door, at which time the white male grabbed her, and then stepped on the gas, screeched out of the parking lot, forced her head down on the seat.

Q When she was being choked, what did she say happened to her?

A She said she was having difficulty breathing.

Q What happened then?

A The car drove around. She wasn't [993] absolutely certain of the exact route it went, but it ended up in the sixty-five hundred block of Northwest Ninth Avenue, which is also known as Powerline Road, and which is in the City of Fort Lauderdale, Broward County, Florida.

She said the car pulled into a warehouse area, up to a camper shell that goes on the back of a truck, but there was no truck there. The camper shell was just propped up there. The car was kind of pulled back into the wooded area, and she was taken out of the car by this white male and brought into the camper shell.

Q And did she ever indicate what he told her would happen, if she resisted?

A He would kill her. He would stab her, choke her.

Q And did she ever indicate that she was crying, and he made certain threats to her?

A Yes, he became very upset when she was crying and screaming.

Q And what did he do when she was screaming and crying?

A He would choke her. He made more threats to her. When he got her inside the camper shell, he ripped her clothes off, forced her into like the upper [994] level of the camper shell, which was a bed area, and sexually assaulted her numerous times.

Q And how did he sexually assault her, did he say?

A He sexually assaulted her vaginally, anally, orally, and then kept repeating this. He would change her position, and just kept doing this over and over again. She said that he did not climax. No evidence of any sperm was found in her at the treatment center, and he became very angry with her that he hadn't climaxed and threatened that he would cut her breasts.

Q Did her indicate anything about her breasts?

A He became also upset that – he told her they were too small, and he bit her very, very hard on the breast repeatedly, and also on the vaginal area.

Q And how hard did he bite her down there?

A To the point where she said it was – she said it wasn't so much out of sexual lust, it was out of violence. He was just trying to hurt her because he was angry that he was not able to climax with her.

Q Now, there came a time when this individual was arrested; is that correct?

A That's correct. He passed out on top of [995] her. She said she layed there for a long time with him on top of her, didn't know if he was trying to trick her, so she finally managed to get herself from underneath him. She said it took quite a while. The only thing she could grab was her – she grabbed her blouse and her bra and ran out, flagged down a passing male that was driving down the street, who picked her up and took her to a location where they did call the police department.

Q And when you took the statement from her, did anything happen?

A Yeah, I had to stop taking the statement because she was so upset. She became sick to her stomach right there. I had to turn off the tape recorder.

Q She was throwing up; is that correct?

A Yes, that's correct.

Q Now, there came a time when this person was arrested; is that correct?

A That's correct. This man that picked her up took her to a phone booth. The policy were called, and they went back out to where she – she showed them where the incident occurred. Her car was there, and inside, they found the subject asleep in this camper shell. The remainder of her clothes were also located [996] and also her jewelry. She had a necklace with a locket on it.

Q Who was arrested, what was his name?

A At that time, when he was arrested, he gave the name of John Doe, and later the name of Dennis Grant.

A [sic] Do you see that person in the courtroom today?

A Yes, I do. He is sitting to the left of Mr. Rich.

MR. HANCOCK: Your Honor, may the record reflect she's identified the defendant, Dennis Sochor? Thank you.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. RICH:

Q How did you know I was Mr. Rich?

A I have met you before.

Q Ms. Russo, so it seems that you say he passed out on top of a girl. Would that indicate to you that he was intoxicated?

A I asked her if she though he was intoxicated. She said she did not spell [sic] any alcoholic beverage of any type. She just said she didn't know if he actually passed out or just fell asleep.

[997] Q When they went back to that location, he was still passed out?

A That's correct.

Q Did you go back?

A I was not there at the scene, no.

Q You have no idea what he passed out from, whether it was drugs or alcohol?

A No, sir, I do not.

Q But you know that he did pass out, and he had been drinking?

A That I didn't know either.

Q She didn't say he had been drinking?

A She didn't, no.

Q Now, this is the one that he was placed on probation for; right?

A That's correct.

Q Five years?

A That's correct.

Q For sexual battery, five years probation?

A That's correct.

Q During that particular sexual battery assault, did he ever receive any psychiatric evaluation?

A That, I don't know. I have no idea. I did not know he was placed on probation until after the [998] fact.

Q You mean the State Attorney never consulted with you, as they normally do about probation?

A No, they did not.

Q Don't they normally consult with you on a case about whether or not you would approve probation or disapprove probation?

A Generally, yes, they do. I have always had them –

Q Every case you have had with me, they have always contacted you, haven't they?

A That's correct.

Q And then you make your feelings known to the State Attorney's Office, whether you would approve or disapprove of probation; right?

A That's correct.

Q In this case, had you known about it, you certainly wouldn't have approved probation, would you?

A Definitely not.

Q You would have had him Baker Acted [sic], if you could have?

A I would have voiced my opinion very strongly. I would have been very against probation.

Q And you would have had him psychiatrically [99?] examined?

A Well, that wouldn't have been under my jurisdiction.

Q Well, you would have recommended –

A I would have asked for it, sure.

Q So, in this case, for some reason, unbeknownst to you, you were never contacted about this probation?

A No, I was not.

Q And it wasn't me that represented him at that time, it was the Public Defender's Office?

A Yes, that's correct.

MR. RICH: Thank you, Vicki.

REDIRECT EXAMINATION

BY MR. HANCOCK:

Q I wasn't the prosecutor, was I?

A No, you were not.

Q Now, as a result of what happened in the case, did you ever receive any calls from the victim?

A Numerous times. She called me every other week after the – when I took her statement, she indicated to me she was moving back to Connecticut, which she did do, and she kept in contact with me throughout. I was receiving supoenaes, like I normally do, pending court, and then I never received [1000] anything for a while. I got a phone call from her. She called me and wanted to know what was going on with the case. I said I don't know, but I will find out, and I found out and called her back.

Q What did you tell her, when you called her back?

A I did not tell her the truth. I told her that he received – I told her that he pled out, which was the truth, but I told her that he received five years in prison, and she was very upset with that.

Q Now, you found out later that in fact it wasn't the judge's fault that certain statements had been made in reference to the case; is that correct?

A That's correct.

Q And what were they?

A That she refused to come back for trial.

Q But you had contact with her though [sic] the whole time?

A that's [sic] correct.

MR. HANCOCK: Thank you.

RECROSS EXAMINATION

BY MR. RICH:

Q Even though she refused to come back, Ms. Russo, you could have compelled her appearance in court by subpoena, could you have not?

[1003] A Well, she never indicated that she refused. She was very anxious to pursue the case.

Q So, how did you get the idea that she didn't want to come back to prosecute this case?

A I heard that later.

Q From whom?

A From Mr. Hancock.

Q Well, I don't quite understand why. She was willing to come back to prosecute the case, but somehow the State did not subpoena her to come back to testify?

A That's correct.

Q You don't know why?

A No, sir, I do not.

Q But it certainly wasn't because of an unwilling victim to come back?

A No, it was not.

Q And you attribute that to just a plea bargaining deal that was made between the State of Florida and the defendant?

A That's correct.

MR. RICH: Thank you, Vicki.

MR. HANCOCK: Thank you very much. Your Honor, with the Court's permission, we would like to introduce in evidence the certified copy [1004] of the felony conviction on Dennis Paul Grant, done and dated order on September 30th, 1980, when he pled to sexual battery and receive a period of five years probation, with a special condition of one year in the county jail.

MR. RICH: No objection.

THE COURT: Maybe [sic] received.

THE CLERK: State's Two.

MR. HANCOCK: And also, Your Honor, through stipulation, the State and the Defense would introduce in evidence the doctors reports that previously testified in the guilt phase, and that would be State's Exhibits B, C, and D, for identification.

MR. RICH: Make it a joint exhibit.

MR. HANCOCK: Okay, joint.

THE CLERK: State's Composite Three.

MR. HANCOCK: Your Honor, at this time, that's all the State would have. Thank you.

MR. RICH: Your Honor, my witnesses are going to be quite lengthy. Maybe we should take –

THE COURT: Call your first witness.

MR. RICH: Gary Sochor.

(Thereupon, the Defendant, to maintain the [1005] issues on his part to be maintained, called as a witness GARY SOCHOR, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. RICH:

Q For the record, Gary, please state your name and where you reside.

A My name is Gary Charles Robert Sochor. I live at 660 West Grand River, Iona, Michigan.

Q I ask you to testify and tell us what your life was like when you and Dennis were growing up, what you

can recall, and you can tell us whatever you say from your heart.

A The first thing I'd like to say is to try to understand this is pretty hard also because of the love I have for my parents, but looking back, I sometimes often wonder how I made it because my whole childhood was memories of nothing but getting beat.

Q You, personally, Gary?

A Yes.

Q How about Dennis?

A More than I. As a matter of fact, Dennis took a lot of my beatings.

Q You mean he took the beatings for some things that –

[1006] A That he didn't do.

Q Something that he didn't do, that you did?

A Yes.

Q And he took the blame for it?

A Yes. He was the big brother. He protected the younger – he was the oldest boy. He protected the younger children. There are ten children in the family. He protected my sisters, and I remember my sister had trouble in her marriage once, and her husband struck her, and he went over and had a nice long talk with her husband, and they are still married today.

Denny had some words with him, told him about ever touching his sister again, and I look back, we

weren't angels. We were just normal country kids out playing, making up our own games, and sometimes things would get started, and we'd get the normally brotherly fights.

I can remember my mother, when my dad would get home, yelling at my dad to spank us for this or for that, and he would start in with the belt, I mean a big belt, and just beat, beat, beat. Sometimes I'd end up with twelve or more welts, and I can remember my mother, in the middle of it, screaming for him to stop, and I never could understand why she would [1007] insist that we get beat, and then in the middle of it, insist to stop, and sometimes I remember my dad, you know, coming home from work. You could tell he had a bad day, and he wouldn't stop and –

Q When you say beat, did he beat you and also Dennis?

A Yes. Dennis always seemed to get – I remember watching, and I just could tell that Dad seemed to swing a little harder at him. I don't know why.

Q Harder at Dennis, than he hit you?

A Yes, and I can remember when Denny finally decided that he just had enough of the beatings and started fighting back, and I remember a lot of times with my mother, one time real in particular, and that one just almost made me sick, but he was having an argument with my mom. It carried on for ten minutes or so, and mom asked him to just shut up, quiet, I've had enough of it.

Q Who was she arguing with?

A Denny, and Denny was just trying to make his point, and I don't even remember what it was about, but I can remember Denny being right because that's just the way I remember, that Denny wouldn't stop because Denny was trying to make his point. I can [1008] remember that I was agreeing with him, and mom just kept telling him to shut up, and she picked up a fork and threw it at him and stuck it in his chest.

I mean, you know, nine times out of ten it would have bounced off, but it stuck in his chest, and he just pulled it out and threw it on the floor and walked out and –

Q Did you notice what type of behavioral changes Dennis has as a result of this abuse in childhood?

A Well, he would always, like I did, always you know try to forget and come back and love our parents the way we did for everything. You know, they did a lot of things with us, with ten kids. They did a lot of things with us, and so it was like a love/hate relationship. One minute you hate, the next, you love, and as we got older, I can remember dad got in a jam at work and lost his job, and Denny was working at the time, and Denny just started handing over his paychecks. Dad tried to give him some spending money, but he wouldn't take it, and back to the question of behavioral things, you know, Denny started like going away and not coming home, and when he did come home, we always – he always ended up in a fight with dad, and I can remember times when he'd leave for a year or two at [1009] a time, and he'd come home, one time in particular. It was shortly – he was gone for about two years. Nobody heard from him,

and he come home, and it was shortly after my father had a house fire and lost everything, didn't have it insured and lost everything, and Denny come home, and after Dad going through the ashes of the fire, he couldn't find any of the remains of a fairly large money collection, old silver that he had, and he questioned me about it, and I told him I didn't hear anything from any of the kids.

He asked me if I heard anybody or knew of anybody who had been taking it because he never found any of the remains in the ashes. I told him I didn't hear of anybody. He asked me if I thought any of them would. I told him I don't think so, and he says, "Well, how about Denny." He said, "You know, he has been gone. He had his troubles. He needs money." I said, "Well, geez, I don't think so, Dad. You know, he's done a lot for the family, supported the family, even when you lost your job," and Dad kept – I kept telling Dad over and over that I didn't think so, and Dad finally convinced that it was gone because I kept asking him, "Well, did you do something else with it, place it anywhere else, put it in a safety deposit box," and he said no. He told me where he had it.

[1010] Well, he ended up accusing Denny of stealing it, and this is shortly after he got back, and Denny come to me and asked me how in the hell dad could even consider anything like that, and I questioned Denny because, you know, it's gone. "Denny, you know, it's gone. Where is it." He walked out the door, and he was gone again.

Q What year was that, Gary?

A I believe the house fire was roughly nine, ten years ago.

Q Had you seen Denny since that incident?

A No. After that incident, I he seen him again.

Q And he never came back home?

A No, he never came back home after that.

Q Anything else you want to say?

A Yeah, my dad ended up finding the money. He gave it to my aunt.

Q The money that he accused –

A The money that he accused him of stealing, he found, and how are you going to tell Denny now, you know, and there is a hundred stories I could tell about running in the woods and hiding for days because we didn't want to get beat, for stupid things like not weeding the garden, not feeding the damn dogs.

[1011] Hell, I took care of an acre yard, would spend the whole damn day keeping it nice and come home and be told that I didn't do enough. I love my parents dearly, but I have three children, and I don't beat them. I have never spanked my children, and I can see they definitely won't have the problems that I have had, and that he's had.

Q So, the first time that you saw Denny then in ten years was when you came down here for a visit, around Christmas of eighty-one/eighty-two?

A Yes.

Q Did you keep in contact with him? Did you write? Did you phone or talk to him at all?

A Didn't no [sic] where he was, no.

Q How did you finally find out where he was, back in eighty-one/eighty-two, Christmastime?

A He called, just said he got out, asked if –

Q Out of prison?

A Yes. I don't know if it was prison.

Q Got out of county jail?

A Yeah, I believe that's what it was. Asked if someone could come down and see him. It was Christmas vacation. I worked at GM, and we have a couple of weeks during Christmas, and I thought – I [1012] left my wife and kids to come down to see my brother that I hadn't seen.

Q In how many years?

A Hadn't seen him since the house fire.

Q Ten years, eleven years ago?

A At least.

Q Do you want your brother to die?

A He doesn't deserve to die. I don't want him to, for the good he had done. It's not his fault. It really isn't. I still have problems loving my parents today, but it's only because they're my parents. My wife today asked me how come I keep going back, because even today, sometimes they treat me with not the love you think a parent should, and my wife questions my motives why – she asked me why are you trying to make them love you. I mean that's pretty pathetic, when your wife has to ask

you how come you're trying to make your parents love you.

I have one brother that doesn't even go over to the house anymore. There were three of us, a year apart. Dennis is a year older, and I'm in the middle, and then we have another brother who's a year and two months younger than I, and there were three of us right together, and we were very close.

My younger brother is a year and two [1013] months younger. I kind of look at it like he got smart. He doesn't even go over there anymore.

Q Your younger brother, is that what you mean?

A Yes.

Q If you had one thing or one request to ask of this jury, what would you ask them to do?

A To not condemn my brother, and to give the family time to show him that we do love him.

MR. RICH: Your witness.

CROSS EXAMINATION

BY MR. HANCOCK:

Q Just a couple of questions, Gary, and if you don't understand something, just tell me.

Now, Gary, you would say that your brother has a violent temper, would you not? Would that be a true statement?

A You know, he did, when we were young. I mean it wasn't until after the beatings that both of our tempers

– I mean I had a pretty violent temper myself, but I finally came to the conclusion that –

Q What did you wife think of Dennis?

A I'm not sure.

Q She was afraid of him, wasn't she?

A She had said on occasions that –

[1014] Q And that's because she thought he was quite violent; isn't that correct?

A I don't know why she was afraid of him.

Q But it came to the point where he used to get in a lot of fights; did he not? Besides your family, didn't he get in a lot of fights, fist fights?

A So did I.

Q But to answer my question – you know, if you need to explain something, I'm not here to cut you off.

A Okay.

Q Didn't he used to get in a lot of fights; isn't that correct?

A Yes.

Q In fact, there was a point you were afraid of him when he got to a certain stage; is that correct, when he had this rage that you –

A Yes, after –

Q In fact, on several –

A As he got older, yes.

Q It got to the point where you would run away from him; is that correct?

A Yes.

Q And at that point, he would go into a rage, and he had an extremely violent temper, did he [1015] not?

A Yes.

Q And now, what you said about your parents, when your dad would come home, supposedly there were certain things you were supposed to do because you all lived on a farm; isn't that correct?

A It wasn't a farm. It was two acres.

Q Two acres, but there were certain chores you had; is that correct?

A Yes.

Q You said you dad used to discipline you; is that correct?

A I don't know if discipline is the word.

Q Well, if you did something wrong, it wasn't your mother, it was your dad that would discipline you; is that correct?

A No, my mother broke a couple of broomsticks.

Q Didn't it come to the point where Dennis was beating up the other kids in the family; not only you, I mean the younger kids, when he would lose his temper and start beating up all the other kids? Wasn't that when your dad finally got to the point where he told him he had to leave because he was beating up the other kids, yourself and the younger ones?

[1016] A There was a time – yes.

Q In fact, he would just start beating them up for no reason; wouldn't he, the little kids?

A I don't remember not being a reason.

Q Well –

A I mean, there was always a reason for the brothers fighting.

Q But why would he beat up on the younger brothers, that you recall him beating them?

A I really don't know why. I mean, you know, I don't know. I wasn't around at the time it started. You know, I just would hear a fight and run over to help.

Q Would you help the other children?

A I would help the others.

Q And you would stop Dennis from beating them; isn't that correct?

A Yes.

Q You would try to be the peacemaker of the family, would that be a fair statement?

A Sometimes I was the troublemaker.

Q But when Dennis was beating the younger kids – and you had about ten kids total; is that correct?

A Yes.

[1017] Q And Dennis was the older one, and you were what, the second to the oldest, and then there was Brian; is that correct?

A No, Dennis was – there is my older sister, Dennis, then I, and then another boy.

Q And is that Brian?

A No, that's my brother, Terry.

Q Well, didn't Dennis used to beat Brian a lot, and Brian wouldn't fight back?

A Brian had a big mouth.

Q But Brian would never fight back?

A Right.

Q And Dennis would beat him and beat him, until someone stopped him, wouldn't he?

A I only remember him hitting him a couple of times.

Q When he would do this, he wasn't under the influence of alcohol, was he, when he would get in a fight with the younger children?

A It's hard to recall if it was, you know, after he had come home from being out. I couldn't recall.

Q Well, even before he started going out, was there a point when he was beating up the younger kids, and at that point, he wasn't under the influence [1018] of any alcohol, was he?

A I would say there were plenty of times he probably wasn't drinking.

Q And we know in fact, through your parents and growing up, he would know it's wrong to kill, would he not? I mean we can agree on that; correct?

A I don't know. Sometimes after the beatings, I felt like dying. I don't know how to answer that.

Q Would he know it's wrong to rape a girl? He would know that's wrong; isn't that correct?

A I would say yes.

Q And even though your parents were quite poor; is that correct, and your dad wasn't working, and there were problems there financially; isn't that correct?

A Yeah.

Q And even though they were poor, they still tried to give you people as much as they could; isn't that a fair statement? Even though they didn't have it though, they –

A No, not when dad was off work. We had to live off Dennis' paycheck.

Q Now, when was the last time you say him, Gary, before you came down here?

[1019] A It was right around that house fire.

Q And what year would that have been, Gary? You said about ten years ago?

A I don't recall what year the house fire was, I really don't. That was such a traumatic thing for my father.

Q Where you aware that he had been arrested for rape in Michigan in 1979?

A No.

Q And when you came down here, what did he tell you he was in jail for?

A I believe it was prowling what he told me it was for.

Q He never did tell you that he had been convicted of sexual battery; is that correct?

A No, I don't recall him saying that.

Q And during this period of time that you didn't see him, were you aware that he was a fugitive from the State of Michigan, and later became a fugitive from the State of Florida?

A No.

Q So, do you know – and if you know from your own personal knowledge, just tell me – do you know that one of the reasons maybe he didn't come back was because he was a fugitive on a rape charge in [1020] Michigan, if you know?

A I didn't know.

Q Did you know him to use any other names?

A Mine, on one occasion.

Q And that was a certain incident that happened; is that correct?

A I got a notice in Michigan – I forget what year – to come down on a prowling charge.

MR. HANCOCK: Thank you, Gary.

MR. RICH: Thank you, Gary. Kathy Cooper.

(Thereupon, the Defendant, further to maintain the issues on his part to be maintained, called as a witness KATHY COOPER, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. RICH:

Q Please state your name and spell you last name, please.

A Kathy Cooper, C-o-o-p-e-r.

Q What's your relationship to Dennis?

A He's my brother.

Q And when is the last time that you had occasion to see your brother, prior to today?

A Ten years ago, maybe.

Q Ten years ago?

[1021] A Yes.

Q Hadn't seen him since?

A No.

Q This is the first time you have seen him in ten years?

A Yes, it is.

Q Going back to your childhood, would you please describe for the jury what your life was like when you and Dennis were children, and if you have something

that you want to read to the jurors, you may do it. Do you have a prepared statement?

A Yes, I do, but I think I can say it all right.

Q You have to speak up, so they can hear.

A Yes, I do, but I think I can tell about it. Denny had a pretty rough life. There were three of us children, me, Denny, and Gary, and all under three years old, and for some reason, I don't know why, all mom and dad's frustrations and everything got taken out on Denny.

The main thing I want to tell you about is some of the beatings that he took. There is nights that I'd go to bed, and especially since all this trouble started, and I think about Denny, and it all runs through my mind like a movie picture.

[1022] My dad used to be a boxer. He is very strong. He knew how to hit, and he has a very quick and violent temper. There were times where literally you'd have to pull my dad off of Denny.

There are three particular times I remember. What really bothers me about the whole thing is my memory. I'm the oldest. My memory only goes back so far. I don't know what happened to Denny before all these times that I remember. I'm shaking so bad, I'm sorry. Dad used to get Denny into a corner that he couldn't get out of, and just constantly hit him with his fist. He'd hit him in the face, in the arms, and you know, my dad would just be in a rage, anyplace he could hit him. Denny constantly had his lips split open, black eyes, bruises all over his body.

There was another time that I remember very clearly that dad had Denny down on the floor and was strattled

over top of him and just, you know, like plummeting with his fist. Denny couldn't get away, and the worst time I remember was one time he had Denny in the corner, and he was beating him, and Denny was trying to fight him off, and he just kept banging his head. He got ahold of Dennis' hair, and he kept banging his head against the wall, and he let go, and then Dennis just sort of slid to the floor, and then [1023] dad just started kicking him. He just kept kicking him and kicking him, and I can remember looking into the kitchen at my mother and thinking why don't she make all this stop.

Q How old were you then?

A I don't know.

Q But you remember this vividly?

A These three times, I remember very clearly, and she didn't do anything, so you know, again, I just went – just literally pulled dad off him. I was afraid he was going to kill him, and I can remember dad left the room. Denny just layed there until dad left the room, and he tried to get up, and he couldn't get up, he hurt so bad, so he started crowling [sic], and I went to him, and I said, "Let me help you," and he wouldn't let me help him. He said, "No, just leave me alone."

Q Did Gary see this, too?

A I don't know if Gary saw it or not, you know, this particular time. It was very common for Denny to get a beating. Nobody else got a beating, but Denny did.

Q Why was that, do you know?

A It's my feeling that Denny come right in between three kids. We were real close, and then there [1024] is ten of us kids all together, within – well, I am thirty-seven. I think my younger sister is twenty, so within seventeen years, there is ten kids. They had a lot of problems. There were a lot of financial problems.

Q Did Denny sometimes take the blame for something that Gary had done?

A I think so.

Q And would he take a beating that maybe Gary should have taken?

A Yes.

Q What makes you think that Denny would speak up for Gary and take the blame and beatings that Gary should have gotten? What indicated that to you?

A It sounds crazy, under the circumstances, but Denny is a very loving person. Family means a lot to him. I don't know why he would stick up for Gary in particular, but I know he did it. You know, I know it for a fact, and as far as beatings, you know, maybe Gary knows of instances in particular, where Denny stuck up for him.

Q And would take a beating, instead of Gary?

A Yeah. You know, Gary might know a particular instance, as I don't necessarily. I just know, you know, how it is with brothers and sisters, [1025] and somebody will say, "Well, I didn't do that. Well, you know, they did it," you know, but once – I don't know. I feel a lot of guilt. I carry a lot of guilt because of the way things were for

Denny, but you didn't know about child abuse then like you know now.

When something happened in your home, you just tolerated it, at least that's what we did. You didn't have TV commercials and everything saying go talk to somebody, find somebody to talk to, tell them what's going on, and when I was a kid, I knew it wasn't right, but yet I knew Denny got in trouble, and he didn't do stuff he was supposed to do, and so that's just the way it was, and it wasn't until I became a mother and have my own kids that I realized what was done to Denny.

I personally cannot tolerate having to spank my kids, for any reason. If there is any way out of giving my child a spanking, I will do it. I mean, I have three children, and I could probably count the times on one hand that they have had a spanking.

Q Would you want this jury to come back with a verdict of death for you brother?

A No, I don't. I feel very, very badly for the parents of this girl. My husband and I lost a child, and I know the agony they are going through. It [1026] wasn't as brutal as this, but I do know what that loss is like, but I feel Denny, if he was ten years old, this Court would do something to help him, but because he is a grown man, he's an adult, and he has to stand responsible for what he has done.

I don't think that's possible because I think actually Denny is still that ten year old child still looking for the love and the security – I don't want to say love because our parents did love us, and I think I know Denny feels

that love, but there was a security and the bonding that they talk about children having with their parents. Denny didn't have that.

Maybe his problem with women is because his mother didn't come through for him. Maybe she didn't stand up for him like she should have, and we all know the younger kids in the family, you know, they don't – in my family, they don't know it. You know, they don't understand a lot of these things. They just know what and hear the things that Denny has done, but in my heart, I honestly believe it all goes back to when he was a child, the brutal abuse and battering that he took.

There were times he didn't do something he was supposed to do, and he'd get yanked out of a sound sleep and get knocked around and be forced to get it [1027] done in the middle of the night. I think maybe Denny is one of these kids – and anybody that's got more than one child will probably know what I am talking about. There is always one kid that you just throw your hands up and don't Know what to do with them.

My first two children – I have a seventeen year old daughter and a thirteen year old son, no problem, perfect angels. You tell them no. They know the meaning of no. I have got a seven year old right now that just if he doesn't make my hair turn gray, nothing will.

Q Did there come a time, Kathy, when you parents tried to seek psychiatric help for your brother?

A Yes.

Q Can you tell us about that?

A I don't remember the exact circumstances. I was married and gone out of the house by that time.

Q Do you have any idea how old Dennis was at that time, approximately?

A Well, I was nineteen when I got married – or no, I was eighteen, when I got married, Denny may have been about twenty. I am not sure. I am really bad. Things are always farther back than I think they are.

[1028] Q Tell us about the incident where your parents tried to seek psychiatric help for Dennis.

A Something happened at my parent's house. I don't exactly remember what it is, but Denny just flew off the handle and beat my brother, Brian, up, and my mom called me on the phone, and she said – I don't even know if my mom was home. I think mom might have taken all the kids and got them out of the house and called me, and Dad was working, and I was closer, so she says, "You got to get over here right now." She says, "Denny just beat Brian up, and he's got to go to the hospital," so I went to my mom's.

They were at the neighbor's up the road. We lived out in the country at the time, and so I picked – I came and went to my mom's. I got Brian, and I took him into emergency, and my dad met us there at the hospital, and I think Dad talked to mom on the telephone. I think he called the police from the hospital and said that they wanted to press charges Denny because things just were getting worst, and so the sheriff's department went out to the house, and they picked Denny up. He was there by himself because nobody would go back home, until he

had been picked up, and that night, the Iona County Sheriff's Office, I believe it was that night, it might have been the [1029] next day, I am not sure. They take him up to Ipsolani (phonetic), Michigan. I believe they have a psychiatric center there or something, and all the trouble that Denny had been in and in doing something like this to his brother and everything, mom and dad wanted to see if there wasn't some way – he wouldn't go get mental help on his own, so mom and dad wanted to see if there was some way where they could prove him like incompetent or something and have to force that help on him, and they took him up to Ipsolani. I think he spent a day up there, and they tested him, and they brought him back, and they told us that he wasn't bad enough to where he needed help, and so the sheriff's department told him that he had to leave home, and he was not to have contact with his family again.

Q The Sheriff told him he had to leave home and never see his family again?

A Yes, they told him that if he couldn't stay at home and get along, that he had to find some place else to live.

Q When he was about twenty?

A I think so. I am not – I am really not sure what the age was.

Q After that incident, was that the last time you seen Denny?

[1030] A No, I think I saw him one more time after that. I'm trying to remember when he was in the Army and everything and dates and for me to go back and remember what happened, before I really get confused,

but I think it was after that that Denny went and lived in Flint (phonetic), and I remember he came home for my daughter's first communion. We had a big party for her first communion.

Q Did all of you children have a foundation in the Catholic religeon [sic]?

A Yes, we did.

Q All had communion, and all were baptised in the Catholic –

A Yes.

Q Did you all attent [sic] church on a regular basis?

A Yes.

Q All you children?

A Yes, up until, you know, after we got – you know, once the kids had graduated or moved out of the house, you know.

Q But I mean the basic upbringing was in the Catholic church, when you were young?

A Yes, my mom was, and she still is.

Q What's one thought that you would like to [1031] leave?

A Pardon me?

Q If there is one thought that you would like to leave with this jury, what would it be?

A I guess just that Denny has done a lot of wrong things, and this last thing that you found him guilty of is

almost unforgiveable, but I understand the anger and everything that's built up in him over the years. Something needs to be done, and God forgive me, something needs to be done, so this doesn't happen again, but to give him – I feel that to give him the death penalty serves no purpose.

I don't know if my mom and dad could handle it, after everything else, but all those years, all those beatings that Denny took, all those nights he crawled upstairs to bed, and he'd lay in bed crying, I think he died a little bit everytime then. I think to give him the death sentence now would be the final injustice you could do to a child.

Q Would you ask this jury to forgive him?

A Pardon me?

Q Would you ask this jury to forgive Denny and not give him the death penalty?

A Yes, I do. I beg you. He doesn't deserve the death penalty. He suffered so much already, if you [1032] had only been there to see it.

Q Now, Ms. Cooper, this is the first time we ever met, is it not?

A Pardon me?

Q Is this the first time we have ever met?

A Yes, I just arrived noon today.

Q I've never even spoken to you before today?

A No, sir.

Q Except in open court?

A No, sir.

Q What you are saying to me now is from the heart?

A Pardon me?

Q What you are saying to me now is from the heart?

A Yes.

Q And is the truth?

A Yes.

MR. RICH: Your witness.

CROSS EXAMINATION

BY MR. HANCOCK:

Q Now, what you know of him then, you feel he was capable of murder; is that correct?

A He could be.

[1033] Q And now, he beat up Brian? In fact, he almost killed Brian, didn't he?

A I don't know. I wasn't there when it happened.

Q But Brian had to go to the hospital; is that correct?

A Yes.

Q And in fact, didn't he get to the point where Dennis was beating up the younger kids in the family?

A There were squabbles and things, but whether he actually beat up on the younger kids, I don't know. I was married and out of the house then.

Q Now, your parents tried to give you as much love as they could; is that correct, and the other children?

A Yes.

Q And I am sure you being a parent, no parents are perfect; isn't that correct?

A Right.

Q Everyone makes mistakes; isn't that correct?

A Right. I know I will. My feelings against my parents, really, they tried their best.

Q So, you are not blaming them; is that [1034] correct?

A No, I am not. I just think that that's the basis for all these problems.

Q In fact, your parents even went to the point where they even let Dennis stay with them? After you were married, he stayed with them, until he was like twenty years old; didn't he, at the house?

A They did that with all the kids.

Q Because you are a big family, and they never asked any of the kids to leave; is that correct?

A No.

Q Now, Denny, with his upbringing, what you know of him, he would know it's wrong to kill and rape; isn't that correct?

A I think Denny reaches a point where there is no right and wrong.

Q And that's when he loses his temper and goes into a rage?

A Yes.

Q Have seen him in such a rage?

A Only in fights with my father, after he got older.

Q Did you ever see him get in a fight with your mother and beat your mother?

A I never saw that.

[1035] Q Now, you said something, all the trouble he got in, they were trying to help him; is that correct?

A Yes.

Q So, there came a point in time where he was getting in a lot of trouble; is that correct?

A I don't know if it's trouble like you'd say police trouble and things, but just too much for them to handle anymore. It got to the point where there was definitely something wrong.

Q And were you aware if, in fact, back in say 1979, he was put on a probation period, and he was ordered to get certain treatments, and that he just took off and changed his name and went to some other state? Were you aware of anything about that incident?

A In Seventy-nine, where was he at that time?

Q It would have been I think up in Michigan at that point, some place in Michigan. Just let us know if you are aware of it. If you're not, just say you're not.

A I honestly don't remember.

Q Are you aware of any time where he was ordered to get treatment, and that he just left, just took off?

[1036] A No.

MR. HANCOCK: Thank you, Kathy. Thank you, Your Honor.

MR. RICH: Charles Sochor.

(Thereupon, the Defendant, further to maintain the issues on his part to be maintained, called as a witness CHARLES SOCHOR, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. RICH:

Q Mr. Sochor, you are the father of Dennis?

A Yes.

Q And I have asked you to come here today and tell this jury what you want to tell them in regards to mitigation. Have you written something up for us, a prepared statement?

A Yes, I have.

Q Would it help you to read you statement?

A Yes, I would have to read it.

MR. HANCOCK: I have no objection.

Q (By Mr. Rich) Would you please read your statement?

A This will be hard, so bear with me. First of all, I'd like to let Patricia's parents and relatives and friends know that many times I have [1037] thought about them. I thought about writing to them, but I didn't know what to say. If I did write, I didn't know how they'd take it, and then if I'd bring back and stir up bad memories, I wouldn't want to do that.

Second, the reason we were not here during the trial was because we could not take the pain that would generate. Also, I was afraid I would hear things that would haunt me. It was not because we didn't want to give Dennis support.

Denny is the second child born of ten, the oldest boy, followed one year and eight days later by Gary, then a year later, another boy. My wife had three boys in diapers at the same time, a time before diapers were disposable.

She washed everyday, had the clothes line full everyday, and worked hard. She worked hard day and night. Most of her attention was put on the baby. Denny needed attention and love at this early age, but he was always deprived because another baby would come, and he was always left out. The baby would get the attention. Denny would stand back and cry and would be ignored.

Also, there was always more demand put on Dennis, as we needed his help. Being the oldest boy, [1038] we always put more responsibilities on him, than he should have had. At this time, I was working two jobs in an automobile plant, a night shift, and construction or lumber mill during the day. Once, when I came home, Rose had had a bad day with the children misbehaving and all her hard work getting her down. She was crying and said

she had lost her temper and beat Denny, then banged his head against the wall.

That incident still haunts her today. She still brings it up. When the children started scouts and little league, it was too much for Rose. I quit working nights, so I could spend time with the boys, in scouts and little league, also to help Rose at home. Just getting all of them to bed and trying to keep them quiet was a big job.

There were times I came home from work, being informed of the things the boys had done, I would lose my temper and beat them, Denny always getting the worst of it. Years later, a neighbor told us – Denny took many beatings that Gary should have had – he said he would be in his barn and here [sic] the boys talking. Gary would be the instigator of some mischief, and Denny would get the blame.

There is no doubt in my mind that Denny had unjust treatment. There was an incident also when [1039] Denny was running with a tin horn in his mouth. He fell, and it went through the roof of the head or through the roof of his mouth, opening a hole that you could see right into his head. He was about four years old at the time. I took him to a general practitioner, a doctor that was just out of medical school and was starting a practice in Portland. He strapped him on the table and had his nurse and me hold his head, with me holding his mouth open, while he sewed him up. He did not give Denny any pain killer or anesthetic. You could see right into Dennis' head, through the hole. He screamed and thrashed, so we could hardly hold him, he was in such pain.

I wondered if the horn could have damaged something. Even though it does not look like it, we both love the children and work hard trying to make good citizens of them, but ten children born in a fifteen year span was very hard, and we had many good times and many bad times. Many times we spent time in hospitals with injuries or sickness. We had one boy burned, when his clothes caught on fire, playing with the coals on the electric stove. We did not know if he would live, for several days, then went through years of skin graphs.

Q Years of what?

[1040] A Skin graphs.

Q Thank you.

A Then the first of Dennis' problems come in his high school years. He broke into a doctor's office and stole pills. This was the first we knew of –

Q What kind of pills were they, Mr. Sochor, drugs?

A I believe they were diet pills, but they told me they were something the kids got high on at that time.

Q Okay.

A It was a real shock to us. It tore us up deeply. About the time Denny was eighteen years old, I was demoted in my position with the company.

Q Is that when you were working for –

A General Motors. I made a bad mistake decision, and I was demoted. The demotion caused the pay loss that would have been a financial burden. Denny went to work at the auto plant to help me out. He would give me

his paycheck every week, without cashing them. I felt guilty taking it. I would try to give him money, but he would refuse. He wanted me to have all of it. He only wanted a few dollars for candy and snacks. About eight months later, the company was losing money due to the person that took my position [1041] couldn't handle the job. I was reinstated and given a raise, and then with Dennis' help getting my job back and getting a raise, I was in real good shape. Shortly after this, I told Denny I did not –

Q You were working two jobs at this time?

A No, just one job.

Q Just the one job?

A Yes, and also at this time, my job also took a big toll because it was a job that took a lot out of you. Shortly after this, I told Denny I did not need this help anymore, as I was back in good shape. I told him to keep his money. He then quit his job and just started loafing around and running around with a crowd we did not approve of.

When I told him we did not need him anymore, we noticed the biggest change in him. It seemed that all he wanted was to be able to be needed, but instead, then again, he was rejected. I wonder how things would have been, if I would have been more understanding. About a year later, he left home. He just left without saying where he was going.

Q What year was that, Mr. Sochor?

A That was, I believe, around when he was nineteen/twenty years old, I would say.

Q How long has it been since you have seen [1042] your son?

A It's been over eleven years, I believe.

Q Is this the first time you have seen him?

A The first time I seen him was Saturday.

Q This last Saturday?

A Yes, in jail.

Q What was the incident, if you can recall and relate to us, that occurred that actually caused Denny to leave home?

A I think he just wanted to – at this point here, I think he just wanted to go out and see the world.

Q Continue on.

A Because if I remember right, he left on a happy note at this time. There were other times he didn't. He came back several times.

Q Was there an occasion when you accused Denny of stealing a coin?

A I wish you'd let me –

Q Go ahead. I'm sorry.

A Several years went by, and we never once seen a heard from him. It was if he had disappeared off the face of the earth. We had, after about four years, given him up for dead, thinking he had been killed while hitchhiking or some other foulplay.

[1043] One night, the phone range [sic]. Someone said, "Hi, Dad." I did not recognize the voice. I said

"Who is this." He said, "Your son." I said, "Which one." He said, "Denny, who do you think," just as if he had seen me yesterday. I broke down. I told Rose who it was. We both cried. He said he was going to join the Army. He called to tell me to send him his birth certificate. He was in California.

At first, he liked the Armu [sic] real well. Again, like everything else he tried, he lost interest. He told me he was going to make the Army his life. He came home after he was discharged, and this is when we seen the big change, where he was violent, especially of [sic] alcohol was involved. He went completely out of control. It started out with his abuses of his younger brothers. There were many times when I came home from work, and they wouldn't tell me that he had beat them up for no reason at all.

There were times in our home, on New Year's night, we were having a party, and Denny was getting out of control drinking. I took his drink away from him and told him to leave the house, as I thought that he probably would start getting violent.

Without any warning, be blasted me in the face and busted my nose. The next day, he came home as [1044] if nothing had ever happened, smiling, grinning just like he didn't know anything had ever happened. There were times I came home, Rose would be crying and telling me Denny had pushed her and hit her. Son number four was working nights and going to college during the day. One afternoon, he got out of his car. Denny walked out to the driveway, spit at him, hit him in the face and beat him up. We had to take him to the hospital.

Q That was Brian?

A Brian. He had to be stitched up. It was about this time that we knew Denny needed help. I took time off from work. Rose and I went to different agencies trying to find how to get Denny some help, to get him institutionalized or something, where he needed mental help. No one could help us.

One of the agencies said we should go to see Judge Banks (phonetic), Iona County Courthouse. We told him about Denny, and why he had to be put into an institution and give him mental help. If he could hurt the ones he loved, what would he do to others. He told us nothing can be done, until he does something.

After Rose broke down and told him then it will be too late, the judge told us he could have him picked up, if we would sign an affidavit and put it on [1045] a tape recorder of his mental state.

Q What year was this, Mr. Sochor?

A It was right around shortly after our 25th wedding anniversary, I remember that.

Q How old was Denny at that time?

A I would say right around twenty-five, twenty-six, roughly.

Q Okay.

A He was picked up, and then in less than a week, released from wherever they take him, to the mental – wherever they checked him.

Q It was a mental hospital they took him to?

A I think it was a mental hospital. I am not sure exactly what it was, but they released him on the conditions that he would report once a week.

He came home very angry at us, told us that we were the ones that needed mental help, and he left. He was very angry at us for having him committed for mental reasons. He then left home and moved to Flint. He would come home once in a while.

At this time, there were incidents where alcohol put him on a rampage. One of his friends told us about him getting in a fight in Flint, and when the police came, he beat up on several policemen, and it took four policemen to take him down, and he was drunk [1046] at that time.

On one of his visits, he brought a friend home with him. They stayed several days, and then left. After they left, I thought I'd better check my silver collection, and I checked where I had hid it, and it was gone. I went to Flint looking for him. I could not find him.

Q When you say him, you mean Dennis?

A Dennis. I was looking for Dennis and the fellow that he brought to the house because I was sure that they took my silver dollar collection. I could not find him, so I swore out an arrest for him. He was picked up, and then they let him go, lack of evidence.

Again, Denny came home very angry, telling me he did not take it. He then left Michigan hitchhiking, approximately eleven years ago. We have not seen him in all this time, until now. A few years later, February 28th, 1978, our homes was completely lost by fire. Everything was lost, burned to the ground. The only thing that we

came out of the house with was the clothes we had on. All the pictures and movies of the children growing up, and I had a lot of them. Once when we mentioned that we had lost everything, and my sister-in-low told me, "Not everything, I still have a bag you left here." I [1047] didn't know what she was talking about. She then went to the closet in her bedroom and brought it out. She said she didn't know what was in it. She says she never looked in it. It was my silver collection that I had Denny arrested for stealing.

I wanted desperately to find him and let him know what I had done, but I had no idea where he was. It was years before I heard from him. One day, I received a call from him, I would say approximately four or five years, and again, we were fairly confirmed and convinced that something had happened, that he had been hit by a car without identification or something and was killed, to go this long without hearing anything. Then one day, I received a call from him. He told us he was saved by the Lord. He seen the Lord.

He said he was wading out into the ocean to commit suicide. He said he wanted to end it all. He said he seen the Lord raise up in front of him on the water, and tell that he was supposed to live.

After this, he would call us and talk to us a long time. I believe he probably spent half of his paycheck on talking to us about the Bible and preaching to us. I do not think the incident would have happened if Denny would not have been persuaded to go to a bar that night, where the alcohol had changed his life back [1048] to his old life again.

Many times, I have wondered if I am the one that has contributed to Dennis' mental state. Denny does not deserve to be killed. He needs to be put into an institution and given the mental help that we tried to get for him thirteen years ago. He has had enough injustices. Killing him would be another, and it would be wrong. Two wrongs do not make a right.

I plead to the jury, the judge, and the Court, please take into consideration all that I have said, and do what is right. Thank you for bearing with me.

MR RICH: No questions.

CROSS EXAMINATION

BY MR. HANCOCK:

Q Just a couple of questions. You seem like a pretty decent man; is that correct? You say you try to be?

A No, I am hard. I was known in General Motors as an ironhand man. I am a hard man, to tell the truth.

Q A lot of discipline then; is that correct?

A I believe in discipline.

Q In fact, your kids, you disciplined them?

A Yes.

[1049] Q And they grew up disciplined then; is that correct?

A That's correct.

Q And if you thought they did something wrong, you would discipline them; is that correct?

A Yes.

Q And in fact, did you ever beat Denny just for the sake of beating him?

A Not to my knowledge. I may have, but not to my knowledge.

Q And –

A I did lose my temper many times. I have a temper.

Q And in fact, Denny had a temper too, did he?

A Yes.

Q He had an extremely violent temper, did he not?

A When he was under alcohol, when he had taken alcohol, otherwise he is the most loving kid. He'd do anything for anybody. He was very well-liked, very nice personality.

Q But did there come a point in time where he used to beat up on the other little kids in the family?

[1050] A He would push them around and –

Q I don't want to cut you off, but haven't you previously said that he used to beat up on the children?

A Yes, when he was in this real mental state, when we tried to get him put in a mental institution, we seen a big change, after he got out of the Army.

Q Haven't you previously indicated that you didn't think he had a problem with alcohol?

A No, I never said that, no. Alcohol was his destruction. He went violent.

Q I don't want to cut you off. Let me show you page nine of the statement. The police came up and took a statement from you, didn't they, Mr. Sochor?

A Yes. I'm ahead of you. I know what you are referring to. They led me to think he was an alcoholic. No, he was not an alcoholic. That statement, interpreted as when they said an alcohol problem, to me in my work, an alcohol problem was an alcoholic.

Q And you didn't think he had an alcohol problem?

A No, he was not an alcoholic, but he had a problem, when he drank alcohol.

[1051] Q But during the times, even before he went in the service, you had problems with him, did you not?

A What most people have with unruly kids, yes.

Q He was an unruly kid, would you describe him, as compared to your nine children?

A What are you talking about as unruly? Now, you have to –

Q You said unruly. I didn't use that term.

A All children are unruly. I have got children that are unruly.

Q Now, if he indicated in a statement to Dr. Zager, if he said he was weird and strange as a youngster, do you know what he meant by that?

A No, he wasn't.

Q He wasn't weird or strange as a youngster?

A No, he may have thought, but he wasn't. I never thought of him – he was one of the best little league players, the best guard on the basketball team. He could have probably been professional in basketball, if he had followed it through. He was very well-liked.

Q And you loved him very much; isn't that so?

A I went to scouts, camping trips, everything, took movies of them. I had hundreds, [1052] thousands of feet of movies of him, and I would show them to everybody.

Q You were very proud of him?

A Yes.

Q You tried to do everything you could to help him; isn't that correct?

A Correct.

Q When he was growing up, in fact you took him to boyscouts, [sic] you took him to little league, you even quit work for a while to help the family; isn't that correct?

A You say I quit?

Q Yeah, did you quit working for a while to help your wife?

A No, no, I quit my day job and because it was too much for her to handle the kids, so I quit my day job. I don't remember which job I quit, if I was on nights. Anyway, I kept my General Motors job and quit the second job.

I was back and forth working days back then, salary worked eight hour days a week, so I couldn't tell you what shift I was on.

Q My question would be: The reason you did it is to help bring up the household, to make sure everyone was brought up properly; correct?

[1053] A Correct.

Q You didn't have any problem with the other nine kids, did you?

A Gary was a problem. Denny and Gary were always getting into something. They were both –

Q They were the closest; it that correct?

A There was three boys together, and what it seemed like, what one didn't think up, the other one did, and they'd get into mischief, and then usually, Denny got the beating for maybe what the other two should have got.

Q Now, in fact you have indicated to the ladies and gentlemen of this jury that you tried to get him help; isn't that correct? You thought he needed help?

A Correct.

Q And you went so far as to get him help; isn't that correct?

A Correct.

Q And in fact, he didn't want help, did he?

A No.

Q In fact, he left and came back and said the people that needed help was you; isn't that correct?

A Yes.

[1054] Q And in fact, he became angry at that time, did he not, and very mad that you had even tried to get help for him; isn't that correct.

A Yes.

Q Now, are you aware back in 1979 – and you told about an incident that somebody had told you about, Mr. Sochor, about he got in a fight with the police and got arrested for assault and battery and resisting a police officer. Were you aware that he was put on probation back then?

A I don't remember. I might have at the time, but I don't remember now.

Q Well, he was put on probation for like two years, and part of it was to receive treatment, and right shortly after that is when he took off and changed his name and came down to Florida. Were you aware of that?

A No.

Q Let me show you, and YOUR HONOR, I ask this to be introduced in evidence, State's Exhibit F.

THE COURT: Any objection?

MR. RICH: No objection.

THE COURT: Maybe received.

THE CLERK: State's Four.

Q (By Mr. Hancock) And looking at, sir, if [1055] you would, please, State's Exhibit Four. This is a order indicating that he was ordered – and this is his name; right, Dennis Michael Sochor, and this address, do you know where that was?

A No, I never heard of it.

Q And here he was placed on probation for twenty-four months; right?

A Yes.

Q It indicates that part of the term of probation was rehabilitation, so he was supposed to receive treatment; isn't that correct?

A That's the first I know about it.

Q But do you know if he ever even tried to get any treatment, when he was ordered by the courts?

A No, I don't. I believe this instance, where I read in here where he was picked up and taken someplace, I believe they released him then and told him to come back once a week. I don't know if he was ordered to, but he was told to come back once a week, and then he took off.

Q Down here? You mean down to Florida?

A I don't know where he went because it was several years. I never heard from him. We thought he was dead.

Q So, the system tried to help him them; is [1056] that correct?

A No. I took it that they completely dropped the ball, didn't even care. That's the way I took it.

Q You weren't aware that he was on probation for rape down here?

A No, I didn't hear about that, until this instance. The California authorities told me about it.

Q I'm sorry, the California –

A About five years, the California authorities came up and talked to us, or somebody might have –

Q So, he was living in California a while, wasn't he?

A I'm sorry, I get California and Florida mixed up. What did you say? What state did you say?

Q I said he lived in California for a while. Were you aware of that?

A Only that when he came and said he was joining the Army, that's where I sent his birth certificate. How long he had been there, I don't know. If he just got there or what, I don't know.

Q When he was in California; right?

A Yes.

Q Do you know if he got in any trouble, [1057] while he was in California?

A None that I know of.

Q But your only contact you had with him then was that one telephone call?

A Yes, saying he was in California.

Q You weren't aware he got in any trouble in Florida; isn't that correct, until after the police came up and talked to you, after this homicide; is that correct?

A Correct.

Q Now, it even got to the point one New Year's Eve, as you've said, where he smacked you in the face?

A Yes, sir.

Q Just totally lost it; isn't that correct?

A Yes.

Q Became in a total rage; right?

A Insane, I would call it.

Q And in fact, he beat you up, and you lost approximately about a pint of blood; isn't that correct?

A Yes.

Q And then it got to the point where he would beat up on your wife; isn't that correct?

A I don't know if you'd call it beating on. [1058] Punching or hitting or something, not beat. I mean he never marked her or hit her in any way. It was something that you wouldn't do to your mother, and as much as I thought of her, I knew that it had to be a mental problem.

Q How old was he?

A This is when he got out of the Army.

Q Didn't you try to get him help before he went into the service?

A No.

Q This was after the service?

A No, I believe – I'm quite sure this was after he got out of the service.

Q When did he get out of the service?

A I don't remember. It's so long ago. I couldn't remember.

Q He was married, while he was in the service, was he not?

A Correct.

Q Did you know Patricia Neal?

A Well, not very well, but I knew her.

Q Did you know he used to beat her up?

A I never heard that, until I spoke to her out here today.

Q In fact, you tried to get him help because [1059] you didn't want him to hurt anyone or kill anyone; is that correct?

A Correct.

Q You thought he was to the point where in fact he might hurt or even kill someone; isn't that correct?

A Yes.

Q And you said that he got involved in a burglary; is that correct, of a doctor's office, a Dr. Anderson, did you say?

A Him and a friend broke into a doctor's office and took some diet pills, I think they were, and that was the first time that I remember of him getting into trouble.

Q Now, he would know it's wrong to kill, would he not? I mean you would have taught him that, would you not?

A Oh, yes.

Q And that it would be wrong to rape a young girl, you would have taught him that; is that correct?

A Correct.

Q And he would know it's wrong to do that; isn't that correct?

A Yes.

Q In fact, there came a time where Gary [1060] tried to tell you what had happened down here, didn't he, when he was down here?

A Yes, when he came home.

Q And said he was there, and he telling you what he had done to a young girl, and you didn't want to hear it; isn't that correct?

A Correct, it made me sick.

Q It was too difficult; isn't that right, to hear what the facts were what he had done to another human being?

A Correct.

Q Isn't that correct?

A Yes, I couldn't believe that anybody could hurt anybody like that.

MR. HANCOCK: Thank you. Thank you, Your Honor.

MR. RICH: Rose Sochor.

THE COURT: Let's take a break, for just a few minutes. Members of the jury, please go into the jury room.

Did you get those instructions complete?

MR. HANCOCK: We did, Your Honor.

THE COURT: Bring the jury in, please.

MR. RICH: Your Honor, we will call Mrs. Rose Sochor.

[1061] (Thereupon, the Defendant, further to maintain the issues on his part to be maintained, called as a witness ROSE SOCHOR, who, being first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

BY MR. RICH:

Q Mrs. Sochor, you are Dennis' mother; right?

A Yes.

Q And I explained to you that you would have to testify in front of this jury, in regards to the penalty phase, and that this jury is to decide whether or not your son will live or die. Are you aware of that?

A Yes.

Q In response to my request, did you prepare a statement for this jury?

A Yes, I did.

Q Would you want to read the statement, or would you want to just tell us what you feel in your heart?

A I'd like to kind of glance at it.

Q You may read it, if you wish, Mr. [sic] Sochor.

MR. HANCOCH: We have no objection, Your Honor.

[1062] Q (By Mr. Rich) Would you please read the statement that you have prepared for this jury?

A Okay. Ladies and gentlemen of the jury, Your Honor, I come before you and plead for my son's life. If he did this horrible act, it is not all his fault, and he doesn't deserve to die. I feel what may have led to this started a long time ago.

Dennis is a good loving son and very family oriented. When he was a year and two days old, his brother was born. I came home from the hospital two days later. Having three babies to support, my husband went to work. At Dennis' bedtime, he was very fussy and crying. The new baby was crying also, and since his cries are more piercing, I picked him up and started to feed him.

Dennis looked at me and immediately threw his bottle across the room, never to take it again. The same night, he started sucking his thumb and did so for many years. This should have clued me, but I guess I was too busy to notice.

As the years went by, we had ten children. It was not only because I am Catholic, but also, I wanted to have a big family because I thought there is a lot of love in it.

Q Take you time, Mrs. Sochor.

[1063] A We worked very hard to keep somewhat on top of the bills. We had a home in the country with an acre garden. All of us raised the food, and I canned

thousands of quarts of fruits and vegetables for the winter. We had two cows that we had for milk for the children, and we raised a lot of our own meat.

Having ten children, while doing the cleaning the errands, I didn't have much time to really show my love for each individual child, even though it was there. I guess I thought they could feel it. As the children grew, we enrolled them in a Perokie (phonetic) school, hoping it would help to give them a good Christian Foundation.

When Dennis was old enough, I became a Cubscout [sic] leader for my sons, and my husband, when they got old enough, got involved in boyscouts. [sic] I also had a brownie troop, when my daughters were of age. We had a little league team for about six years. When my husband worked nights, I managed the team for him. I was on the Home School Association at our church, and I only want you to know that everything we did was for the children. I guess we thought by being really involved was helping show our love, but I know now all of this really shortchanged all the kids, Dennis especially.

[1064] He was a child that needed a lot of one on one, and there just wasn't time, and at the time, I didn't know all this. I though it would be easy to love my children and raise them. It has only been since the children are grown, and you have grandchildren that I see the wrongs I did with mine.

He wanted to get into music, with the accordian, and I took him for lessons to start, but we had to buy one, and just didn't have the money, and him knowing we didn't have the money, he didn't push it. I wished we'd somehow bought it. Dennis was a difficult child, but at that

time, there wasn't much written about it, as there is now, and there was not outside help, but I know now that when Dennis was naughty, it was because he was demanding attention, and I was on abusive mother because I wanted him to mind.

There were times I treated him horribly. I know it now. I didn't then. His high school years were also hard, as we only had one car that my husband drove to work, so when they went to dances or dates, they had to find a way there and home or walk, and that was seven miles one way.

As he became older, there was a lot of hostility and problems with him. We knew something was wrong, and we went to school to talk to Mother [1065] Superior. She looked into it, but she said there was no way we can afford professional help, and the sisters and us would all try to help him. My husband worked two jobs at the same time because we had a running dentist bill that was finally paid up by the 25th.

It became very bad after his discharge from the Army. Whenever he drank, he would become violent, and on the next day, he acted as if nothing had happened. When I told him what he had done, he thought I was exaggerating or telling him some lies. He had attacked my husband, his brothers, and me. He finally attacked one of nis brothers so bad that he was taken to jail.

We went to see about getting psychiatric help at that time because we thought we could afford a little bit anyway, as we told them that one day, he was going to go too far, but he never ever remembered doing any of it. They said there was nothing they could do because he

had to turn himself in for help, and he told us he didn't need help, that we did, and I sincerely believed this.

Somehow, we got to talk to a judge, while he was in jail, to see what we could do to get him committed for help. After listening to our pleas, he somehow believed us and got around all the rules to [1066] help us get Dennis committed to a place, Jarvis Acres (phonetic), where he stayed not even quite a week, when they called me and told me to come and pick him up.

At the meeting with the counselor, they told us that he definitely needed psychiatric help, but was not severe enough to keep him there. I guess it was the place. I don't remember, but I guess it was the place where they took people that were violent. He told them before we left that he would seek help, and they let him go.

We went once to set up an appointment for Dennis' dad and I. We were all going to go for help because I knew we all needed it. At the time we took him out, he said he would go, but when it came time to go, he said again, he didn't need the help, we did.

I was quite concerned about how he would feel about us putting him there, but he never held it against us at all. One time, my husband lost his job. I guess he didn't really lose it, but he was demoted, and we didn't know which way to turn. All of the security was gone, but Dennis went to work in a factory and gave his whole paycheck to my husband. My husband tried to give him some money for himself, but he would not take a penny. He only wanted a couple of packs of cigarettes a week. This went on for about a year. He [1067] never griped or complained never. He actually seemed happy to help.

My husband went back to work and thanked him sincerely for helping and said we no longer needed his money, now he would be able to keep it for himself, and I guess that was another mistake because Dennis needed to help. My son Dennis is a good and loving son. I don't know what triggers the violence when he drinks. If only someone would have helped us with him, when he needed it. If only I had been a better understanding mother. We tried the best we knew how. I love my children so much. I wasn't equipped mentally or physically to take care of that much.

The Lord alone, how he tries. I feel so much sorrow for the parents and loved ones of the girl and, the first time I heard, I wanted to do something about it, but I didn't know what to do, and I was hurting myself. I can't imagine the horror they have gone through and will the rest of their lives, but at the same time, I love my son. I have done so many things wrong to him. I beg you, don't take his life, please. Give him the help that any sick person deserves, the help that nobody else has been willing to give. That's it.

Q (By Mr. Rich) Now, Mrs. Sochor, this [1068] statement that you have given us, did I in anyway help you write it or compose it or dictate it?

A No.

Q And your husband's statement, did I in anyway help him write that?

A No.

Q They [sic] statements that both of you wrote on your own?

A Yes.

Q As a matter of fact, this is the first time I ever heard either statement?

A Yes.

Q Or your daughter's statement?

A Yes.

Q Was the first time here in Court?

A In fact, I just called my daughter last night and asked her to come down from –

Q And I never read these statements before?

A No.

Q So, what you are saying now is –

A From my heart.

Q Do you feel, Mrs. Sochor, that with God's help, your son can be saved?

A Yes, I do.

CROSS EXAMINATION

[1069] BY MR. HANCOCK:

Q Do you need a drink of water, ma'am, or anything?

A No, thank you.

Q I just have a couple of questions, with your permission. You indicated that you were a very close family; is that correct?

A Yes.

Q Even though you had ten children, you tried to give them all the love you could; isn't that true?

A Yes, I did.

Q And you tried to do the best that you could; isn't that correct?

A Yes, I did.

Q And parents make certain mistakes, and I think you indicated you made some mistakes; is that correct?

A I made a lot of them.

Q And he is the only one out of you children that had problems; is that correct, with the law?

A No, I am sure they all had problems, but it just seemed like I guess he was the nuttiest.

Q And it come to the point where he had [1070] quite a violent temper; is that correct?

A Yes.

Q In fact, he used to beat up on the other children; is that correct?

A Yes, but as I have said, I am sure it's from his childhood. I got beat, too.

Q And would he just get beat for no reason?

A No.

Q Your husband –

A He got beat for what he did.

Q And there was a lot of discipline in the family; is that correct? Your family, your upbringing, did you have a lot of discipline in your family like so many of us?

A No. I mean, I had a lot of discipline, but my dad was a wonderful person.

Q Your dad was; right?

A And I didn't have to get a spanking.

Q Now, did your husband ever just beat him for no reason?

A no. [sic]

Q Generally, there was a reason because he had done something, and your husband was attempting to discipline him; is that correct?

A But the punishment was too severe for as [1071] little as he was.

Q Now, did there come a time when you had problems with Dennis, and then when your husband would come home, you would tell your husband?

A Yes.

Q That he pushed you around and –

A Yes. That was another thing, I never did anything myself. I always threatened the kids, when their dad come home. I never followed through.

Q And in fact, he got to the point where he was pushing you around; is that correct?

A Not just when something happened. I don't know if it had been when he was drinking.

Q Well, isn't it true that there was a lot of fights, even before he was ever of drinking age; isn't that correct, that you saw a change in him?

A I can't remember when it was. Kids drink young.

Q But it came to the point where you figured he needed some help; isn't that correct?

A Yes.

Q You thought he was to the point where he might hurt someone and might even kill someone; isn't that correct?

A Yes.

[1072] Q Did he appear to be more violent toward men or girls?

A Men, because it was his brothers and his dad, and it was only when he was disciplined, or it's been so long. I don't know why he fought with his brothers. Brothers fight, when they are little. They used to always fight.

Q Now, how about your husband, it got to the point where one New Year's Eve, he knocked your husband down; is that correct?

A He had been drinking.

Q And hit him as hard as he could, would that be a fair statement?

A I guess.

Q And it came to the point where he was – in fact, you even let him live in the house until he was like twenty years old; isn't that correct?

A Yes.

Q Because you tried to do all you could to help him; is that right?

A I can't remember how old he was.

Q It appears that you blame yourself; is that correct, for some of the things that he may have done, or things he did do; is that correct?

A I was a very abusive mother.

[1073] Q But your husband used to try to help him too; is that right? He'd take him to Boyscouts. You'd take him to Little League.

A Yes, we loved our children. Even though w had ten, we loved them.

Q And I am sure you did. I don't think there is any question you gave him as much love as you could, as much love as you had for the time; is that correct?

A Yes.

Q Now, were you aware that he was ordered to receive certain treatment and help?

A He wasn't ordered, that's the problem.

Q Where you tried to get it, and then they took him in, and he came back, and he was upset that you people even tried to send him to a hospital.

A No, he wasn't upset.

Q He wasn't mad?

A He wasn't upset.

Q He didn't say, "You people need the help, not me?"

A It's when I asked him, I says, "Dennis, if you go for help, I will go because I know I need it too," and that's when he said that he didn't need it, we did, I did, or I don't remember who, him or his dad [1074] and I or him.

Q Now, let me show you what's marked in evidence, and you may have never seen this before, so just tell me if haven't. It's State's Exhibit Four, ma'am, in evidence, and it indicates that he was put on probation in 1979, and part of that was because he was in a fight, assault and battery on a police officer, resisting a police officer. Were you aware of any of that incident?

A I didn't know where that happened.

Q Let me show you, and it says right here Ortinville (phonetic). Have you ever heard of that?

A No.

Q Is that in Michigan?

A I have no idea. It says Michigan, does it?

Q Right. Do you know how many different names he was using?

A No.

Q Let me ask you this: If he was put on probation in 1979, in Michigan, for two years, do you know if he even stayed to receive any treatment or help in Michigan?

A Seventy-nine? I just can't even – I just don't know.

[1075] Q That's all right. In 1980 though, were you aware that he was arrested and convicted for rape down in Fort Lauderdale?

A No, not then.

Q Were you aware that he was very violent to his first wife, Patricia Neal?

A No, I was not aware. Pat never told us.

Q There was a lot of things about him that you were not aware of, would that be a fair statement?

A Yes, there were. I know there were things about the marriage that Denny wasn't happy about, too.

Q You weren't aware of any problems he had with prostitutes or whores, while he was living in Italy then; is that correct?

A No.

MR. HANCOCK: That's all. Thank you, ma'am. Thank you, Your Honor.

MR. RICH: Thank you, Rose. That's all I have, Your Honor.

THE COURT: State wish to make some comments?

MR. HANCOCK: Yes, thank you, Your Honor. Mr. Rich, Judge Seay, and ladies and gentlemen of the jury, again, I thank you for participating as jurors. I will not thank you [1076] for your verdict because you took the law, you applied it to the facts and came back with a verdict that spoke the truth, and you did it after hearing

all the evidence, and so on behalf of the State, I thank you for you participating as jurors, and you did your duty, and you did it with courage. You did it with truthfulness.

The Court is now going to give you some circumstances to consider. The Court is going to tell you about certain aggravating circumstances and also some mitigating circumstances. The Court is going to tell you that the first job is to consider the aggravating circumstances and see if they apply, and if you find that certain aggravating circumstances apply, then you must consider. If there is mitigating circumstances, then you must make a determination, if the aggravating circumstances outweigh the mitigating circumstances, and then you make a recommendation, and it's a very important – your recommendation to this Court is extremely important, and there are many reasons for capital punishment, and we do have capital punishment in Florida as a deterrent in [1077] retribution, and I think retribution is a justifiable function of our society, and it's not a matter of revenge at all.

It's a matter of justice, and capital punishment, is the ultimate symbol of law and order, and that's very simple. If you commit the worst crime, then you must suffer the worst punishment. It's that's [sic] simple, and I think you people all said that the punishment should fit the crime, and it's not pleasant to be here. It really isn't.

I'm sure Mr. Rich agrees with that, and capital punishment is not pleasant, and we do have capital punishment, and it's the state government. We send young people into wars and battles, knowing that they are going to lose their lives, and it's the same thing with capital punishment.

If you do a certain type of crime that's heinous and atrocious and against the State and against the government, then rightfully you should be executed, but your job is to consider all the circumstances, and in this past week, we heard a lot of tears in the courtroom, and in this sentencing phase, and as I said before, [1078] whatever tears are shed, are much easier to shed than the blood of Patricia Gifford, much easier, but we all remember the little girl, just recently last week, little Jessica McClure, I believe her name was, the little eighteen month old girl that fell down the little tunnel, the little well.

She was down there – I think she was down there like forty or fifty-eight hours. She was down there without any food. She was down there without any water at all, and I am sure everyone felt for her. There were prayers for her, and no one knows what that little girl went through, but fortunately, she was rescued, and she was saved, and she suffered a life and death situation, and fortunately for her family and everyone else's, her life was saved, and what we have here, we have also a life and death situation.

We have a life and death situation that occurred back on January 1st, 1982. Patricia had the similar experience, and we can't go back there, and I can't take you back there to that evening, to the pain and the horror that she suffered that evening. We can't go back there, [1079] and you cannot experience that, but you have to base your decision on the facts and the law.

So, I am going to go over those, and I ask you, when you make your recommendation, to come back with what you think is the proper recommendation, and I will later

tell you what I think the proper recommendation is, based on the law and the facts, and it's not an emotional decision. It is a legal decision that you make, no matter how many tears are shed.

Your job is to apply the law and what aggravating circumstances apply to the facts of the case, and it's a legal decision, not an emotional decision, and there is a lot of ladies on this jury, and ladies have more of a tendency to become emotional, and there is nothing wrong with that, but it is a legal decision that you have to make today, and some of the aggravating circumstances that you can consider is that the defendant was previously convicted of a capital felony, or a felony involving the cause or threat of violence to another person, and there is no question that that aggravating circumstance applies.

In fact, even though this is just a piece [1080] of paper, and even though it says he was convicted of sexual battery, there was a victim, and that victim was Rhonda Rowe, and you heard what happened to that victim. You heard that in fact he took her, and you heard the violence that he did on her, and how he bit her here and here, and that even during her statement, she regurgitated. She threw up. It was that much violence. It was that much pain and suffering that she suffered, and he terrorized her, and he was convicted, and you will see that he was convicted in September of 1980, and approximately a year after that, shortly after a year, he was released, and he is doing it again. He is doing it again.

And I guess this goes to show you how the criminal justice system doesn't always work, that in fact it didn't

work at all, but there is no question that that one applies, that aggravating circumstance applies. He has been previously convicted of a rape.

The crime for which the defendant to be sentenced was committed while engaged in the commission or attempt to commit any sexual battery or kidnapping, and again, there is no [1081] question, ladies and gentlemen, that that one applies because, in fact, he even says in his statement that he wanted sex. She refused him, and that then he went and started – they got in a fight. He had this urge to have sex. Whatever sick urge this is, he had it, and that's a sexual battery. You also convicted him of kidnapping, and you can't combine the two, but you can put them together, and there is no question that one applies. That's the second aggravating circumstance.

The other one, and it's an extremely important one, and that is that the capital felony was especially heinous, atrocious, or cruel, and I think there is no question, whatsoever, that this crime was ruthless, was senseless, was atrocious, and even was a heartless murder, and the evidence is clear that he dragged her out, dragged her out of there, while she was screaming for help, and she begged for her life, and he takes her back there, and then he kills her, and he chokes her, and you heard from Dr. Wright. Dr. Wright told you about the pain that's involved, that it's not a quick death, and that she had to contemplate [1082] her own death, that she was out there on that abandoned road at night, that she had that fear that she knew what was happening, as he was choking her, and there is no question from the evidence that she was innocent, that she was an innocent eighteen year old girl that was very beautiful, very sweet. She had a lot of

promises, and he took away her most precious right, and that was her right to live, and there is no question that this crime that he committed on Patty was atrocious and cruel, and that's the third aggravating circumstance.

Another one that you can consider is that the capital felony was homicide and was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification, and I think that one applies, too, and that applies because, in fact, he takes her out – if he wanted just to have sex, he could have had sex in the pick-up. He took her out, and then he killed her, and there was no legal or no justifiable reason at all for Patty to lose her life.

In fact, you heard from the evidence he was on probation for rape, under the name of [1083] Dennis Grant, but he knows what happened. He didn't kill that girl. He knows that, in fact, he was put on probation, and he knows if, in fact, he was caught again, then he is going to be violated. So, I think that that one applies, that it was in a cold, calculated, and premeditated manner. I don't think there is any question that that one applies.

Then we come to the mitigating circumstances in this case, and I'm sure Mr. Rich will get up here and argue that they apply and just like he argued, in fact, that that [sic] he was not guilty of this crime, and he is expected to do this. He was excellent, and you will hear him get up, and I am not quite the speaker he is, and I ask you to listen to him like you are listening to me, but the question is which mitigating circumstances and go over there and read them to yourselves.

One is Dennis Sochor has no significant history of prior criminal activity. Ladies and gentlemen, that doesn't apply at all, and that's why we called Captain Schlein, to testify about the pending sexual battery case he still has in Michigan, and you heard about that one, how he [1084] takes her from the bar. In fact, she even throws up in the car, when he is taking her back, so there is no question. You heard about these from the other family members, about the battery on the police officer. You heard about the burglary from the doctor's office. There is no question that that one doesn't apply.

He is on probation for rape. He has a definite significant history of criminal activity.

Here's another: The crime for which the defendant is to be sentenced was committed while under extreme or emotional disturbance. That doesn't apply either, and take the doctors' reports back, and you will see and read them in a little more depth. The doctors testified. You seen what they found him to be, a sexual offender.

In fact, Dr. Zager's report indicates that in fact he was involved in like three different sexual batteries, but they all concluded the same thing, that he knew it was wrong to kill, and I even think his mother and his father indicated that, that he would know it's wrong to kill, and so I don't think that one applies at [1085] all.

And the doctor said he even tried to fool them. You remember Livingston said about the fake profile. He was trying to fool the doctors, and one doctor said he had selective amnesia.

I think all murders that occur, there is something wrong, there is some psychological problem, or he wouldn't kill, but that doesn't mean your emotional to the state you don't know what's going on, and that you're so disturbed you don't know it's wrong to kill, and it's wrong to rape.

Many people have emotional problems and disturbances, and they don't go out and rape and murder.

Another one is that the defendant's capacity to appreciate his conduct and conform to the law was substantially impaired, as the doctor's [sic] told you. That one doesn't apply either. They can't get up here and say it's alcohol, that the reason he committed these violent crimes was because of alcohol, because you heard from Patricia Neal, and Patricia Neal was married to him for about a year, and she [1086] told you about the beatings that she suffered, and she said that he wasn't under the influence of alcohol then, that he didn't even drink alcohol, so they can't come up and say that that applies in mitigation because when he drank alcohol, he became violent because he became violent, when he didn't drink alcohol.

And then another one, and I don't think any of those are mitigating, and there is another one: Any other aspect of the defendant's character or record and any other circumstance of the offense that you can consider, and I think it's extremely nice that the family came down here and testified, and no matter what they have to say and the tears they shed, I think they are a loving family, and I think they tried to do all they could for Dennis Sochor, and I think that the mother tried that. I think the dad

tried that, and it's funny that they always want to blame it on someone else, and you always want to blame it on yourself, when something goes wrong. The mother, she blames it on herself.

They claim he was beaten, he was disciplined, and so he was abused when he was [1087] young. I guess they want to claim that that is a mitigating circumstance in this case.

Well, there are many people that are abused and children that are abused, but that doesn't give them the legal right to go out and rape and kill people. It really doesn't, and it's so easy to identify with the living. It's so easy to come in here and identify with Dennis Sochor's family. That's very easy because you see, they are alive, and it's so much easier, but as I said, don't forget what happened to Patty and don't forget the pain that she suffered, and they get up here, and they say they understand how her family – if you recall – they understand how her family feels.

They can't understand how her family feels. She was only eighteen years old. She had her whole life ahead of her. She was eighteen. She was very beautiful, and there is a difference between when you kill someone young, and when you kill someone old. Someone old, they have already had their life mostly. See, someone young, all they have is their hopes and their dreams ahead of them, and he took that away from Patty.

[1088] Mr. Sochor, he seems like a decent man, when he testified. He said he tried to raise him, took him to Little League games. They took him to church, and he said he couldn't believe – you remember him, he said he

could not believe that someone could do that to another human being. When Gary started telling him what had happened, he couldn't believe it, and you can take all the stuff back with you.

They tried to get him help. The parents even tried to get him help, and it's indicated on the record that, in fact, he received probation in Michigan, and part of that probation was that he receive treatment, and what does he do, he doesn't voluntarily go get that treatment. He takes off, and that's when he starts changing his name. He was on the run. He takes off.

Shortly after that, you hear that he commits this rape in Michigan, and then he comes down to Florida and changes his name, then he commits a rape down in Florida, so then he has to change his name again, and then he goes to these other states.

So go back there and come back with a [1089] decision that you think is proper in this case. I don't think there is any question that the aggravating circumstances outweigh the mitigating circumstances. There is just no way they are going to get around that and get up here and argue that they don't, because the aggravating circumstances, there are at least four, and I don't think there is any mitigating circumstance, unless you include the tears of the family, and you have to consider – and I could get up here and tell you, you know, not to consider these, but I think you have to consider all of them, but you got to consider something else. You have to consider what he did to Patty, and how it happened.

You have got to consider that in making a determination of what the proper recommendation is, and if you

live by the sword, you must die by the sword, and he had no mercy on Patty, and Patty wasn't involved in any child abuse when she was younger or anything like that, and a lot of times, it's very hard to get up here and give a recommendation, and I am not a big fan of capital punishment. I am not a big proponent of capital punishment. I think it applies just in [1090] certain select cases, and only in those select cases, and the State's recommendation in this case is death because you have to decide if this is a type of crime that deserves the worst type of punishment, and I don't think there is any question that this is one of those atrocious, most cruel, one of the most senseless, one of the most heartless crimes that there can be, and if you take all that in, you see that the aggravating circumstances definitely outweigh the mitigating circumstances, and remember, you can consider the other testimony that you have heard in this case, and remember Paul Jones, what Paul Jones said, what he said about that it's easy, and if you remember this, he said it was easy to kill, and he said that life is life, and death is death, and when you're gone, you're gone.

It was easy for Dennis Sochor to do what he did, and that's what he said, and in fact, even Hickey said that he called her a slut, a bitch, Patty, this eighteen year old girl, this is the way he described her. He gave her no mitigation, whatsoever.

So, go back there and do your duty, like [1091] you did before, and you have an opportunity to do something. You have na [sic] opportunity to come back with what you think is the proper recommendation and not only an opportunity, you have a duty to do that, and you have an opportunity to bring justice to a sometimes very

unjust society, and so go back there and come back, and tell Dennis Sochor that he had no value for life. In fact, he said life is life, and death is death, when it's gone, it's gone.

It's easy, he said, and he could do it again. So, go back there and tell him that his life, that the crime that he committed against not only Patty, but against the State of Florida, that he deserves only one sentence, and your recommendation should be twelve to zero is what is should be, if you take the law and apply it to the facts, and don't be emotional about it, and remember the tears of the family because he has forfeited his right to live in a humane society by what he did.

So, go back there and listen to everything and listen to Mr. Rich, and decide if this is the type of case that we have capital punishment in Florida for, and it is, and the reason we [1092] have capital punishment in the State of Florida sits right there, and that's Dennis Sochor.

Thank you. Thank you, Judge.

MR. RICH: May it please the Court, Kelly, ladies and gentlemen of the jury. This is a v[illegible]agic moment for all of us, I suppose. Somehow I supp[illegible]s a compliment when Kelly says that he is not as good a speaker as me. Kelly is our top gun in the State Attorney's Office, and this isn't the first time that we have tried cases together.

When he says he is not a fan of capital punishment, I have never tried a case with Kelly where he didn't ask for capital punishment, and I have never tried a case where I

never asked the jury not to bring back capital punishment. I am opposed to capital punishment, and that's why I always get talked into by judges to take cases like this because I am viamently [sic] opposed to capital punishment. I don't think anyone has a right to take the life of anyone. I think only God has a right to give and take life.

So, I have, throughout the course of my career, more times than I care to count, have pleaded with juries to spare my client's life.

[1093] When I was a young lad, I have seen the face of death in the service of my country, and it's a frightening thing. I spent many hours in fox holes,and whoever said there is no Atheist in fox holes was right. It's a frightening thing to have to face the reality of death, when you're young, knowing that you have your dreams and your hopes ahead of you, but I have got over that, and I don't regret the service that I gave to my country.

If it wasn't for that, I would never be a lawyer because they sent me to law school to be a lawyer, try a lot of cases, and I wound up not too long ago facing death very, very closely because I had a very, very severe heart attack, triple bypass. It was so bad, that they were making funeral arrangements for me. My wife is here. She remembers that tragic moment, and when the doctor came in to me, and he says, "Charles, we have to perform this catheter, whatever it was." I says, "Well, why do you have to perform that." He says, "If we don't do it, you are going to die," and I says, "Well, what happens if we do it." He says, "Well, there is only a fifty/fifty chance that you are [1094] going to die," and you know, when I was a

young lad, it was terrifying, but when I became an old man, and I was faced with death, it wasn't so terrifying because I know that when I finally go to meet the final judge, and he says to me, "Charles, what have you done on earth that entitles you to eternal rest and peace in heaven," and I can say, "Well, Judge Lord, all I ever did for a third of a century was to plead for the life of my fellow man, and I don't know if I was wrong because Kelly always pleaded for death. God, was I right, or was I wrong, or was Kelly right, or was Kelly wrong?"

He says, "Well, I will talk to Kelly later. I am talking to you now, and you did the right thing, when you pled for the life of your fellow man and for the life of the man that I made and created."

So, you can talk about all the mitigating circumstances you want, and you can take a scale back there, and you can weigh one against the other, and you can say there is three mitigating circumstances, and there is three aggravating circumstances, and you can say whatever you want on the scales of justice, which I proudly wear [1095] on my belt, but there is no justification for death at the hands of the State of Florida.

When I spoke to you in closing arguments, I talked to you about Karma, and of course, I'm a firm believer in Karma, firm believer in destiny. I know that when I was born on October 9th, 1925, that I was destined to talk to you twelve people. There is nothing in life that would have changed that.

Here is a case – and believe me, I am no virgin to capital crimes. This is not my first case. I am not a young novice law student that has never faced death trials

before, and this is the worst I have ever had to go through. This is the worst I have had to go through because of the circumstances of a poor – and I know it's not an excuse for the crime, but a poor unfortunate individual who never had a chance, from a very young age, and who's Karma was destiny because of his environment, because of his abuse, because of the things that molded his destiny, while he was a child, led him to this courtroom today.

Let's look at them. You heard the aggravating circumstances. You will get these [1096] back there. I don't have to argue these to you. He said something like circumstances of the past. Well, what really amazes me about the judicial system, about this entire system of society, we could spend, I don't know, what, a billion dollars on a submarine, or twelve million dollars on an F-16 or an F-15, who can destroy a city in a second, but do you think we would ever spend enough money to feed the poor, to feed the hungry, to feed the needy, to feed the mentally deficient?

I was amazed when I read Zager's report, and you will have it here. "This man is extremely dangerous, under the influence of an alcoholic beverage. He has a drug abuse from the time he was sixteen-and-a-half, but he is not dangerous enough to be involuntarily committed, under the Baker Act." What kind of stupid law is this? What kind of system do we have in this country? What kind of society do we have in this country that doesn't take care – we have created a frankenstein monster with this system.

And then we wonder why we have people, ninety percent of the people in this country, [1097] who are in favor of capital punishment. If he had received the treatment, not voluntary commitment, but an involuntary commitment, at the time when he was first diagnosed, this would have never occurred. Society, you people, me, everyone is to blame for this situation that we have here today.

So now that Kelly, the top gun, comes in here and says, "Well, destroy this sick person". Well, you want to really be right about it. We have got about three hundred and fifty-four hundred thousand men who are incarcerated in jail, throughout this country. I have the perfect solution for the crime of America. Let's kill them all. Let's take all four hundred thousand of them and wipe them out. You will have four hundred thousand who will never comit [sic] a crime again. How's that for a solution?

I think Hitler tried that. Somewhere, somehow, I have got to get twelve people, or seven people even, to understand that death only begets death. Killing him is a total act of revenge by the State.

The philosophy of Mr. Kelly: "If you live by the sword, you die by the sword," and that's [1098] the problem with our world today, billions and billions and billions of dollars for defense and destructive weapons, but not one dollar to save this man from committing the crime that he did commit, and I wonder if he was alone in committing it.

There was other people there, too, another person there, too, who says – and I don't, you know, quarrel with the jury verdicts. I am never one to quarrel with jury

verdicts. You people are here, and I know it's not pleasant, and I know when you said you would like to serve on this jury, you didn't know what you were getting into, and everyone of you said, "Yeah, I'd like to serve. Oh, yeah, I believe in capital punishment," but now you are faced with a harsh reality of pulling the switch, and don't think that your advisory opinion is going to go ignored by this Court. Judge Seay respects – and I guarantee – well, I can't guarantee you you [sic]. It's not binding, of course, but I will guarantee you one thing. He respects and admires every one of you, and he will take into great consideration your recommendation.

I doubt, knowing Judge Seay for thirty [1099] years, that he would take lightly – I know he wouldn't take lightly, no judge in this circuit – no judge that I know, no judge that I have ever tried a case with, would ever take with a blithe spirit your recommendation.

I will just look at them. I will go through the drill, as to mitigating circumstances. The crime for which the defendant is to be sentenced was committed while he was under an extreme mental or emotional disturbance. Boy, if that one mitigating factor does not outweigh all the aggravating circumstances that Mr. Kelly can tell you, and I know Mr. Kelly is trying to dig at your moral fortitude in saying you have to kill because that's the only punishment that fits the crime, but can you honestly in your heart say that this defendant doesn't have some kind of problems mentally? Is he really responsible for what molded his Karma and his destiny, or was the outside forces in which he was raised, his environment, was that responsible for the final production that we see here?

Now, that was beyond and above his control. Certainly that one factor alone would [1100] outweigh any of the aggravating circumstances.

The capacity of the defendant to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired. Any question in your mind about that? You got the reports here, the whole thing. Some of it came out. Some of it didn't. Now, you got it all.

Zager, nevertheless, "Behaviorly, he loses control under the influence of alcohol. Can be overtly dangerous to others, if given the opportunity. This gentleman can be extremely dangerous, under the influence of alcohol." This was diagnosed twenty years ago, fifteen years ago, and then when I ask Dr. Zager, a competent psychiatrist, he said, "Well, he's extremely dangerous, but it's okay to leave him out." What kind of a law is this? "He is not a candidate for involuntarily [sic] committment, [sic] under the Baker Act."

Patsy Ceros-Livingston went through a lot of psychological tests, where you check things out. I have gone through that thing, too. I flunked it, too. According to her, I am a psycho myself. She's probably right. She says [1101] that he knew the difference between right and wrong. I am not trying to tell you he didn't know the difference between right or wrong, but she says, "If committed as alleged, however, it should be noted that Mr. Sochor reported he had been drinking, was drunk at the time of alleged crime." Well, it goes to the mitigating circumstances. What, do you think he was at that bar five, six, seven hours and didn't have a drink?

Then she says, "Well, when he was in Italy, he didn't drink, but he was on hash in Italy," an even worst [sic] drug. Hashish is worse than alcohol, and I know that his ex-wife didn't want to come in here and testify. She was subpoenaed to be here. She didn't voluntarily come down here and talk about this, but even back in the service, they went to a psychiatrist, and so well, "He is dangerous, under the drugs and hashish, and his conduct doesn't conform, but he is not a candidate for involuntary – even in the service, no one seemed to want to – you know, years ago back when McNaughton – you heard of McNaughton's Rule – McNaughton was a poor diluded individual [1102] who had dillusions and said, "Well, God made me kill some member of parliament." McNaughton's Rule stems from 1892, and they are still using McNaughton's Rule in this modern age now.

I would certainly have hated to have a triple by-pass using the procedures that they had back in McNaughton's time.

The psychiatric evaluation of another doctor, Castillo. He says that – you can read these, you know. He says he has an anti-social personality and a mixed substance abuse, alcohol, cocaine. Now, these aren't my doctors. These are the doctors that are paid by the State.

I'm sure if I could have afforded it, I could have gotten another psychiatrist and could have gotten you a different evaluation, but unfortunately, nobody can afford these things. I always question the money, too much money for jails, jails are overcrowded. We need more jails. We need more judges. We need more prosecutors.

Well, it's always a numbers game. It's been that way since I was a young lad like Kelly.

So, they decide to – we can't take care [1103] of it, so let's kill, let's destroy it. Like the American who is sick with AIDS. Well, we can't cure it, so let's kill them. A person who's sick with Cancer, well, we can't cure it, let's kill them, but sick is sick, whether you're physically sick or mentally sick. They don't kill people with AIDS. They don't kill people with Cancer. They research. They give them medical help. They give them treatment.

When it comes to a sick mind, they don't treat it. They just let it go in our society. We have running around, time bombs waiting to explode. We have people out there who are sick, and nobody, you, me, or nobody else, the Courts, the system, nobody wants to pay to take care of sick minds, so we kill them. That's the easiest way to do it.

So, if you want to have that type of philosophy, let's kill the lawyers. The lawyers only come in here and just aggravate everybody and just impede the progress of justice. Just go ahead, when they're caught, just have cops take them out in the alley and shoot them. That would be a great deterrent, wouldn't it?

And I suppose some cops would say, "Yeah, [1104] that's a good idea. Let's do it that way," but we don't do things like that in America. We might don't [sic] things like that in Natzi [sic], Germany. We might do things like that in Iran. You don't do it here in America, but we do have the barbaric and the cruel an [sic] inhumane punishment, the electric chair, and I think every juror, whoever voted for the death penalty, should have to witness an

execution in the electric chair. I have, on numerous occasions. It's a horrible, inhumane way of killing.

I am uphauled [sic] at this nation, the greatest nation on Earth, should have such a law. They do. Many states have it, and many states don't. The Federal Government doesn't have the death penalty, but Florida does, and Florida always asks for it, and it never deters one crime of passion. It doesn't even deter crime when there is no passion. It doesn't deter killer for hirer [sic]. It hasn't deterred one homicide from happening. All it does is bury the problem. So, what's the alternative? You recommend mercy, and you recommend life, and he will spend twenty-five years in the can, and that's day for day.

[1105] Maybe he will receive the help that he needs. Maybe he will receive a divine guidance, the mother's prayer of redemption. He tried it. It succeeded for a while, when he was in the religious efforts, that he tried. He made a feesible [sic] effort to it, but he wasn't required. It wasn't compulsory. It was something that he knew he had a problem with, and that he tried to do, and he was led into temptation, and no one is a saint.

Instead of saying to the devil, "Get thee behind me," he let it take over him, and now it's up to you people here, twelve strangers, people who I've never seen before, who I probably will never see again, to pull the switch on a poor diluded man, who obviously has no control under the influence of an alcoholic beverage.

So, I know that in some future time, when I'm sitting in my backyard by the pool, and I'm drinking my scotch and water, and I'm contemplating the decision that I made today, and the plea that I made to you, I know that

I have done the right thing. I know that my conscience will be clear. I know that when I [1106] meet my maker, and he says, "Charles, what have you done," I know that he's not going to condemn me for asking you for mercy, for asking you to put this man in a place where he will spend the rest of his life, and maybe, occasionally somewhere along the line, a shrink will look at him, and a shrink will help him, and after twenty-five years, he will finally come out and be redeemed by divine providence.

UNIDENTIFIED SPEAKER: Never.

MR. RICH: Say it again.

THE COURT: Okay, let's go on. Quiet here.

MR. RICH: I don't need that.

THE COURT: But let's go on.

MR. RICH: That was the brother of the deceased who said that. That's why we don't have brothers of decedents on juries. He would have you pulling the switch, and I am sure that he would be glad to pull the switch, but he is not a juror. He is not the one that's going to make this decision. It's you, and I don't know when you go back to your homes and back to your lives, back to your everyday experiences, and if you might in some quiet time in your life think [1107] back on this day and say, "Did I do the right thing," because once you make your decision, once the decision is made, you cannot retract it. It's in stone, and you must live with that decision for the rest of your life, and I hope it maybe [sic] long.

I know not, and I ask not, and I tell you not what decision that you should make. As I have said to you

before, you have to be a Daniel to come to judgment. You have to use the wisdom of Solomon, and you have to have the patience of Joan.

I don't envy your position at this point. I would not want to trade places with you ever.

I would never want to be placed in a position wherein my hands I held the life or death of another human being, but that is your job, and that is your duty, and you accepted that, and you accepted it with a lot of courage and a lot of moral fortitude, and I don't belittle it. I understand that it's a great sacrifice on each individual's part, and it's probably most likely the greatest decision that you will ever have to make in your whole life.

I had to make that decision when I had my [1108] triple by-pass to live or die, and back when I had this thing six years ago, it wasn't as easy a procedure as it is now, but I made that decision to live, and with God's grace, I am still alive today. So, for those of you who have never faced death, take it from me who has faced death, it ain't a pretty sight, and I think that this is something that really is the fault of all of us.

When I say is all of us, I mean society, because it is not only Dennis Sochor. I have pled this same thing before. There has been others. I think that there are many other people – you know, it's a world gone crazy. The Legislature says now you can carry guns to protect yourself because the police have admitted, or the Legislature has conceded, I suppose, that they want protection. You have to wait for disaster to happen, before you can do anything. You have to wait for somebody.

It's like you make a complaint that my mate had threatened to kill me, and the cop says, "Well, I can't do anything, until he kills you," and that's what's happening throughout the criminal justice system.

[1109] So, as I leave you with the most important decision that you will ever probably have to make in your life, and I plead with you to make the right one. I plead for my client's life. I am not making a lot of money on this case. It's not a question that what I'm doing is for the bucks.

Kelly is making more money on this case than I am. It's not a question of money. I have been appointed to represent this man. So, I am not pleading with you and talking with you because I am taking a big fee out of this like Matlock would, a hundred thousand dollar fee. I would probably talk a little bit louder, if I was going to make a hundred thousand dollar fee, but I am talking through my heart that this man, and no other man, deserves to die.

"Revenge is mine," says the Lord. It's up to the Lord to take a life or to give a life, not you or me or anyone else or the State of Florida, and I ask you to spare his life.

Now, if someone came to me at my age and says, "Charlie, what do you want to do, die in the electric chair or spend twenty-five years in the can." I'd have to say, "Give me the quick [1110] plan." I'd rather do the electric chair because I've made peace with my maker. I am not afraid to meet him and tell him what my life for the last third of a century has been like, and the Lord will talk to Kelly later.

MR. HANCOCK: I object to that. I don't think that's appropriate.

MR. RICH: So what, I didn't object to anything you said.

THE COURT: That's improper.

MR. HANCOCK: That's not proper.

MR. RICH: I think it's perfectly proper. This top gun here always asks for the death penalty.

MR. HANCOCK: Judge, that's not true. Mr. Rich knows that. I ask for a sidebar, Your Honor.

THE COURT: Gentlemen, let's just keep this off a personal level and speak to the jury.

MR. RICH: It's the policy of his office to always ask for death.

MR. HANCOCK: Judge, I object to that, Your Honor. That's not so, and Mr. Rich knows it, and I would respectfully object. I ask the Court to rule on that. That's not proper [1111] argument, Your Honor.

THE COURT: I don't know what all these facts are. It's not a proper comment. I don't think there is any evidence on that.

MR. RICH: We are not in a high school debate. This is a life and death situation. Do the right thing. Bring back a verdict of life. Thank you, ladies and gentlemen. The verdict is yours.

THE COURT: Ladies and gentlemen of the jury, it is now your duty to advise the Court as to what

punishment should be imposed upon the defendant for his crime of murder in the first degree, and as you have been told, the final decision as to what punishment shall be imposed is the responsibility of the judge.

However, it is your duty to follow the law that will now be given to you by the Court and render to the Court an advisory sentence based upon your determination as to whether sufficient aggravating circumstance exist to justify the imposition of the death penalty, and whether sufficient mitigating circumstances exist to outweigh any aggravating circumstances found to exist.

[1112] Your advisory sentence should be based upon the evidence that you have heard while trying the guilt or innocence of the defendant and evidence that has been presented to you in these proceedings.

The aggravating circumstances that you may consider are limited to any of the following that are established by the evidence.

Number one, that the defendant has been previously convicted of another capital offense or of a felony, involving the use or threat of violence to some person. The crime of sexual battery is a felony involving the use or threat of violence to another person.

Number two, the crime for which the defendant is to be sentenced was committed while he was engaged in the commission of or attempt to commit the crime of sexual battery and/or kidnapping, and number three, the crime for which the defendant is to be sentenced was especially wicked, evil, atrocious or cruel, and number four, the crime for which the defendant is to be sentenced was

committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

[1113] If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment, without the possibility of parole for twenty-five years. Should you find sufficient aggravating circumstances do exist, it will then be your duty to determine whether mitigating circumstances exist that outweigh the aggravating circumstances.

Among the mitigating circumstances you may consider, if established by the evidence, are: Number one, Dennis Sochor has no significant history of prior criminal activity. Number two, the crime for which the defendant is to be sentenced was committed while he was under the influence of extreme mental or emotional disturbance. Number three, the defendant was an accomplice in the offense for which he is to be sentenced, but the offense was committed by another person, and the defendant's participation was relatively minor.

Number four, the defendant acted under extreme duress or under the substantial domination of another person. Number five, the capacity of the defendant to appreciate the [1114] criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. Number six, any other aspect of the defendant's character or record, and any other circumstance of the offense.

Each aggravating circumstance must be established beyond a reasonable doubt before it maybe [sic] considered by you in arriving at your decision. If one or more

aggravating circumstances are established, you should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive, in reaching your conclusion as to the sentence that should be imposed.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, you may consider it as established.

The sentence that you recommend to the Court must be based upon the facts as you find them from the evidence and the law. You should weigh the aggravating circumstances against the mitigating circumstances, and your advisory [1115] sentence must be based on these considerations.

In these proceedings, it is not necessary that the advisory sentence of the jury be unanimous. The fact that the determination of whether you recommend a sentence of death or sentence of life imprisonment in this case can be reached by a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings.

Before you ballot, you should carefully weigh, sift, and consider the evidence and all of it realizing that a human life is at stake and bring to bear your best judgment in reaching your advisory sentence.

If a majority of the jury determines that Dennis Sochor should be sentenced to death, your advisory sentence will be a majority of the jury by a vote of – and there is a blank space. You will fill in the number – advise

and recommend to the Court that it impose the death penalty upon Dennis Sochor.

On the other hand, if by six or more votes, the jury determines that Dennis Sochor should not be sentenced to death, your advisory sentence will be: The jury advises and [1116] recommends to the Court that it impose a sentence of life imprisonment upon Dennis Sochor, without possibility of parole for twenty-five years.

You may now retire to consider your recommendation, and when you have reached an advisory sentence in conformity with these instructions, that form of recommendation should be signed by your foreman and returned to the Court. This is an advisory sentence. You may take these instructions back with you.

Members of the jury, you may retire now and consider your advisory sentence.

(Thereupon, the jury was excused to consider their advisory sentence.)

THE COURT: A verdict of guilty, Count I, murder in the first degree and also guilty of Count II, kidnapping, the Court adjudges the defendant guilty of Count I, murder in the first degree and also adjudge [sic] him guilty of kidnapping. He has not yet been – you should do that.

MR. RICH: There is no technical violation there.

THE COURT: It should be done now because [1117] I – either way gentlemen, we got to set a sentencing – not only a sentencing date either way, but also we have to resolve the other two cases. You want to listen to what I am saying, or you want to continue to talk? We

have a sentencing to set here, and we also have two other cases to be determined. If you'd like to talk about it, I think I can set it over about two weeks.

MR. RICH: The other two cases?

THE COURT: There is a violation of probation pending and also the grand theft charge.

MR. RICH: I was under the impression, Your Honor, that you were trying the violation of probation along with this trial.

THE COURT: Well, that may be, but there still has to be a determination on that.

MR. HANCOCK: That was my determination or my thinking, too, Your Honor, that you were hearing testimony from the trial to determine if there was a violation of probation.

THE COURT: He has also a grand theft charge.

MR. RICH: I think we can set that over. [1118] There will probably be a plea on that case.

THE COURT: Set two weeks from now would be November the 4th. That's a Wednesday.

MR. RICH: Fine, Judge.

MR. HANCOCK: We can do it on the Second, Your Honor. Would that interfere with your docket, the Second of November, because I think on the third and fourth, I have to be somewhere.

THE COURT: The second is no problem.

MR. HANCOCK: That would be better for me, Your Honor.

MR. RICH: Whatever, it wouldn't take too long.

THE COURT: November 2nd, nine o'clock.

MR. HANCOCK: Thank you, Judge.

THE CLERK: Are you going to set the other two for the same date?

THE COURT: Yes, we will set them then and make a determination.

(Thereupon, a short recess was taken, after which the following proceedings were had:)

THE COURT: Mr. Bailiff, has the jury reached their advisory sentence?

THE BAILIFF: They have, Your Honor.

THE COURT: Bring the jury in, please.

[1119] Members of the jury, have you reached your advisory sentence?

MS. SAYWARD: Yes, we have.

THE COURT: Would you hand it to the clerk, please? Read the verdict, Madam Clerk.

THE CLERK: Yes, Your Honor. In the Circuit Court of the 17th Judicial Circuit, Broward County, Florida, case number 86-15270 CF, Judge Russell E. Seay, State of Florida, plaintiff versus Dennis Sochor, defendant. The majority of the jury, by the vote of ten to two, advises and recommends to the Court that it impose the death penalty upon Dennis Sochor, Jean B. Sayward, foreman, October 21st, 1987.

THE COURT: That's the verdict, the sentence of each and every one of you?

THE JURY: Yes.

THE COURT: It will be received and filed of record. We will set the sentencing for November the Second at nine o'clock.

Members of the jury, I thank you very much for your service. I appreciate that you were willing to stay here later this evening and render this advisory sentence.

We do have a certificate for you, and [1120] since the hour is late, you will be sent a check for your service through the mail.

I appreciate your consideration and patience. I had other matters, you know, while this case was pending, and so it sort of interfered, so I do appreciate you working with us.

Members of the jury, you are excused now, and you may leave.

(Thereupon, the jury was excused.)

THE COURT: Any other matters to come before the Court?

MR. HANCOCK: None by the State, Your Honor.

MR. RICH: No, Your Honor.

THE COURT: Sentencing is set for November 2nd, at nine o'clock. Court is adjourned.

(Thereupon, an adjournment was taken to 9:00 a.m., November the 2nd, 1987, at which time the following proceedings were had:)

* * *

[1122] (Thereupon, the following proceedings were had:)

THE CLERK: Dennis Sochor.

THE COURT: I'm going to let him sit at the table, Kelly.

Oh, incidentally, how does he score on that kidnapping?

MR. HANCOCK: Judge, I'll do a quick scoring on that. Here's his scoring on the sexual battery.

THE CLERK: There's three cases here.

THE COURT: Well, the grand theft's still pending now?

MS. KAPLAN: Judge, this scoring is with the grand theft.

THE COURT: Now, it was agreed that the violation of probation would be held along with the trial.

MR. RICH: Yes, sir.

THE COURT: And the same facts submitted?

MR. RICH: Yes, sir.

As far as the grand larceny is concerned, I am sure we can just enter a plea of nolo, to run concurrent with any sentence he gets on the other charge.

[1123] THE COURT: Well, assuming that's what he wants to do.

MR. RICH: Yes, Your Honor, that is his pleasure.

THE COURT: All Right. Dennis Sochor, you have this grand theft charge pending, having to do with that truck. It has not been tried yet. I understand you want to change your plea from not guilty to guilty on the grand theft charge?

THE DEFENDANT: That's right.

THE COURT: And waive your right to have a trial?

THE DEFENDANT: That's right.

THE COURT: All right. Do you understand, you won't hear any witnesses testify against you and you lawyer won't be able to cross-examine them and you won't be able to testify in the case?

THE DEFENDANT: Yes.

THE COURT: Or call witnesses to your defense?

THE DEFENDANT: That's right.

THE COURT: Okay, then, it was agreed during the trial on the murder in the first degree and kidnapping charge that the Court [1124] would also consider those facts as pertaining to the violation of probation on the sexual battery and kidnapping; right?

MR. RICH: Yes, Your Honor. Since we're not entitled to a jury trial on the violation of probation – it is strictly a court hearing – and I think the Court –

THE COURT: Well, the Court heard all the –

MR. RICH: The Court is fully aware of all the evidence heard in the violation of probation.

THE COURT: The Court heard all the evidence and, also, along with the jury, the jury has found him guilty of murder in the first degree and kidnapping.

Was there an adjudication on that originally?

THE CLERK: On the violation; yes. And also, adjudication on the trial.

THE COURT: Everything but the grand theft; right?

THE CLERK: Yes.

THE COURT: All right. Then we're here this morning for sentencing on the murder in [1125]-the first degree and, Count II, of kidnapping.

Also, the sexual battery that he's on probation and kidnapping and the grand theft.

Is there anything to be said why sentence should not be imposed?

MR. RICH: Do you want us to approach the bench, Your Honor?

THE COURT: Do it from there. It will take a few minutes.

MR. RICH: Your Honor heard all the evidence and all the testimony. I think that the strong mitigating factor was the uncontroverted testimony of the defense witnesses, the parents.

That he has lived a very much abused childhood, plus, the testimony of the psychiatrist that he's a confirmed abuser of alcohol and drugs.

I feel that the basis of those two factors, the psychological report and the history of his childhood, that the man is, maybe, not legally insane, but he certainly is, to my mind and to the psychiatric mind that he has a personality disorder of some kind.

I know that doesn't excuse it, but by [1126] way of mitigation, it might circumvent or obviate the necessity for the death penalty. And I would urge that the Court consider those in passing sentence.

Mr. Sochor, do you want to say anything?

THE DEFENDANT: Well, Your Honor, when I was younger, I realized – at certain times when I was beaten, I ran to my room, if I could run or scream or crawl and I know I wanted my parents dead. And then I would pray to God, thinking he was there, please don't kill them. I didn't mean that.

I know, as a young boy in school, private Catholic school, literature was a very much loved subject and I would write my own book reports rather than read them. But for some reason, when I would write, I would have problems thinking things through. And since I've been incarcerated, I've been working on works of poetry and I stated in the police deposition that during the past five or

six years, I only tried to help people and give of myself as much as possible, knowing that I did not know what happened for sure five or six years ago.

In my heart, the only way I can live with [1127] myself is I didn't know if that thing happened because I was intoxicated to a point that I did black out.

And I said many things because I did not know and maybe to protect my brother, because I did not know.

I have contemplated suicide since I've been incarcerated because I felt if I could hurt or kill somebody I really don't deserve to live myself.

But the only thing that kept me going was, I didn't know if I committed that act for sure.

And if given the death sentence or 25 years, any works or writing and the moneys thereof will be donated to charities, children or any available charity that is possible because I would like to leave something behind in this world.

I have set out to do many things in my life and achieved none of them for some reason. So maybe I'll achieve all the love that is in my heart that was never really brought out, ever.

Thank you, Your Honor. And I would like [1128] to apologize and offer my deepest sympathies to Mrs. Ryan. And I know, in my heart, that I could not willingly hurt or murder anyone in my right frame of mind.

I thank you.

THE COURT: Count I, on that kidnapping count, sexual battery was nol prossed at the time of the probation; right?

MR. HANCOCK: That is correct, Your Honor.

I have done a score sheet, Your Honor, on the kidnapping that he was found guilty of in Count II of the present indictment and I have total points of 369.

I'll have Mr. Rich look at that.

I do have some letters that the Ryan family would like the Court to just read briefly about their feelings, how they have suffered as a result of the death.

THE COURT: Do you have the score on the other, on the sexual battery and the grand theft?

MR. HANCOCK: Here's that charge on kidnapping, Count II. Mr. Rich has looked at that.

[1129] THE COURT: 17 to 22.

All right. Saying nothing sufficient, the defendant, Dennis Sochor, having been found guilty by a jury of murder in the first degree and, also, Count II, kidnapping, having been adjudged guilty, also, the Court finds that he has violated his probation and is adjudged guilty of sexual battery.

I think he had been previously adjudged, hadn't he, Debbie?

THE CLERK: Yes.

THE COURT: Also, the Court accepts the change of plea from not guilty to guilty to grand theft.

He hasn't been adjudicated on that one.

Adjudge him guilty of grand theft.

The defendant, Dennis Sochor, was indicted on October 9th, 1986 for the crimes of murder in the first degree in Count I and kidnapping in Count II of the indictment.

The case was tried before a duly impaneled jury commencing on October 13th, 1987, and concluding on October 20th, 1987.

The jury, having heard the evidence and the law instructed by the Court, concluded the [1130] guilt phase of the trial by finding the defendant guilty of first degree murder and of kidnapping as charged in the indictment.

On October 21st, 1987, a separate proceeding on the issue of penalty was conducted before the same trial jury as mandated by the provisions of Florida Statutes 921.141(1).

After hearing further testimony, argument of counsel, instructions by the court, and due deliberations, the jury returned an advisory sentence of death by a vote of 10 to 2.

Pursuant to the provisions of Florida Statute 921.141(3), the Court hereby makes the following findings of fact:

Aggravating circumstances, number one. The Court finds, according to Florida Statute 921.141(5)(b), that the defendant was previously convicted of another capital felony or of a felony involving the use of threat of violence to another person.

The defendant was arrested on March 14th, 1980, for sexual battery and kidnapping.

In State of Florida versus Dennis Paul Grant, Case Number 80-2497-CF, the defendant, [1131] Dennis Sochor, using the alias of Dennis Paul Grant pled to sexual battery and was sentenced on September 30th, 1980.

Number two. The Court finds, according to Florida Statute 921.141(5)(d), that the crime for which the defendant is to be sentenced was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit any sexual battery or kidnapping.

The jury convicted the defendant of kidnapping in Count II of the indictment. There is sufficient evidence to prove the victim was taken from the Banana Boat and, at some point, held against her will.

She was forcibly dragged out of the truck as she resisted and pleaded for help.

As to the attempt to commit sexual battery, the defendant, from his own statements to law enforcement officers, indicated he wanted sex and when the victim refused him, he became angry and a fight ensued. The defendant said he had these urges for sex. Even though there was no evidence the defendant actually sexually assaulted the victim, [1132] the body was never found, the defendant's admissions prove the death occurred as he was attempting to sexually assault her.

The Court finds that both of these felonies were committed or attempted to be committed but the Court considers this as only one aggravating circumstance.

Number three. The Court finds, according to Florida Statute 921.141(5)(h), that the capital felony was especially heinous, atrocious or cruel.

The evidence indicated that the victim was forcibly removed from the truck while she pleaded for help and even begged for her life.

Even though Patricia Gifford's body was never recovered and no one knows how badly she was beaten, the defendant admitted in his statements that as he choked her, she resisted and fought him.

There were several fingernail marks on his face, which substantiates that a violent struggle ensued as confirmed by the defendant's statements to the police officers.

Dr. Wright testified that asphyxiation [1133] is a slow and painful death.

Fear and emotional trauma preceding the victim's death may be considered as contributing to the heinous nature of the capital felony. It is clear there was fear and definitely emotional trauma before her death.

Number four. The Court finds, according to Florida Statute 921.141(5)(i), that the crime for which the defendant is to be sentenced was committed in a cold, calculated and premediated [sic] manner without any pretense of moral or legal justification.

The evidence indicated that the defendant pulled the victim out of the pick-up at night along an abandoned road and proceeded to strangle her. He disposed of the body so it could never be found. The defendant had previously been put on probation for sexual battery and

knew the consequences if the victim survived and notified the police department.

There is no question that it was committed in a cold and calculating manner as the defendant told a witness who testified that he had choked someone to death in Fort Lauderdale, Florida, and how easy it was to do.

[1134] Furthermore, a cellmate testified that the defendant had stated he had "killed the fucking slut bitch."

There is no pretense of moral or legal justification.

Mitigating circumstances; number one. The defendant has no significant history of prior criminal activity. This mitigating circumstance does not apply. To the contrary, the defendant has a most significant history of prior criminal activity. The defendant admitted he had committed a rape in Michigan, which case is still pending.

According to the doctor's reports introduced in evidence and all of the testimony, it indicates a very significant history of criminal activity.

Number two. The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

This mitigating circumstance does not apply. The doctors who testified all found the defendant competent and that he did not meet the criteria for involuntary hospitaliza- [1135] tion pursuant to the Baker Act. However, he was diagnosed as a [sic] extremely dangerous and violent.

Even though the defendant claimed to the doctors he could not remember what happened, the Court finds, as Dr. Costello testified, that the defendant suffered from "selective amnesia," and attempted to mislead the doctors as to his recollections of the murderous incident.

Number three. The victim was a participant in the defendant's conduct or consented to the act. This mitigating circumstance does not apply. The victim, Patricia Gifford, was a helpless and fearful 18-year-old girl and in no way consented to this act.

Number four. The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor. This mitigating circumstance does not apply.

All the evidence indicated that, even though the defendant's brother was there, he attempted to stop the defendant from committing this brutal murder.

Five. The defendant acted under extreme [1136] duress or under the substantial domination of another person. This mitigating circumstance does not apply.

Six. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. This mitigating circumstance does not apply.

All the credible evidence indicates that the defendant was able to appreciate the criminality of his conduct and was able to conform his conduct to the requirements of law if he so desired.

He told a witness, who testified during the trial, that he had choked someone in Fort Lauderdale, Florida, and it was so easy that he could do it again.

Even though the defendant maintained he was intoxicated during the crime, the testimony from all the witnesses showed, though he may have had some alcoholic drinks, he was still in control of his actions and behavior and knew what was happening.

His ex-wife testified that he acted violently even when he was not under the [1137] influence of alcohol.

Seven. The age of the defendant at the time of the crime. This mitigating circumstance does not apply. The defendant's birth date is February 25th, 1952, and at the time of the crime he was 29 years old.

Eight. Any other aspect of the defendant's character of record and any other circumstance of the offense. There were several members of the defendant's family who tearful [sic] and grievously testified. However, after considering their testimony, this Court finds no non-statutory "mitigating" circumstances.

In summary, it is the conclusion of the Court after carefully and conscientiously weighing the aggravating and mitigating circumstances, that there are sufficient aggravating circumstances to justify and warrant the imposition of the death penalty and that there are no mitigating circumstances to outweigh the aggravating circumstances.

It is, therefore, the sentence of this Court that you, Dennis Sochor, be sentenced to death for the murder of Patricia Gifford.

[1138] It is further ordered that you, Dennis Sochor, be taken by the proper authorities to the Florida State Prison and be kept in close confinement until the day of your execution, and on that day, you be put to death by electrocution, which is the manner prescribed by law, and may God have mercy on your soul.

You, Dennis Sochor, are hereby notified that the judgment of conviction and the sentence of death are subject to automatic review by the Supreme Court of Florida.

You are further advised that you have the right to the assistance of counsel in the filing and preparation of your appeal. If you cannot afford your own attorney, you should advise the Court and an attorney will be appointed for you.

Done and ordered in open court, Broward County Courthouse, Fort Lauderdale, Flroida, [sic] this 2nd day of November, 1987.

MR. RICH: In connection with that, Your Honor, I have prepared notice of appeal, which I'll file today, together with directions of the Clerk and the court reporter, which I'll [1139] show to the Court.

I have copies for counsel.

I also have an order for the Court indicating that these papers will be filed. I suppose I should file them first with the clerk downstairs, the appeals clerk.

And I also have a request and an order for appointment of the Public Defender for the purpose of the appeal.

I should file a motion for a new trial. I thought I had those with me. I didn't bring it with me, Your Honor. I'll file a motion for new trial with an order today and I will then file these other papers. I thought I had them with me, but I see I don't. I know I prepared it. I just didn't put it in the file.

I have prepared a motion for new trial with an order, which we can set down for hearing later on this afternoon.

THE COURT: All right.

MR. RICH: And get that disposed of before I file all these other papers.

But I wanted to indicate to the Court now that he is indigent and that he does need [1140] someone to handle his appeal.

THE COURT: File these later.

MR. RICH: I'll file them later, as soon as we have a hearing. I'll have that hearing sometime this afternoon and I'll get copies.

THE COURT: All right.

On Case 80-2497, the defendant, having heretofore been adjudged guilty of sexual battery, it is the sentence of the law that the defendant is hereby committed to the custody of the Department of Corrections to be imprisoned for a term of natural life. That will run concurrent.

Also, on Count II of the indictment, murder in the first degree, he is heretofore been found guilty by the jury

and adjudged guilty of kidnapping, and it is the sentence of the law that the defendant is hereby committed to the custody of the Department of Corrections to be imprisoned for a term of 22 years to run concurrent.

82-198, adjudge him guilty of grand theft and he's committed to the custody of the Department of Corrections for a term of five years to run concurrent.

[1141] They'll need fingerprints on the grand theft.

THE BAILIFF: All right, Dennis, step over there.

MR. RICH: Maybe we can have that motion for a new trial in the morning at 10:00.

THE COURT: I'll have docket call at 9:00 in the morning.

MR. RICH: Because Mr. Hancock will not be available this afternoon, so I apologize to the Court. I had it ready and forgot to bring it.

THE COURT: All right.

MR. RICH: I do have it typed up, but I forgot to bring it.

THE COURT: All right.

(Thereupon, the sentencing was concluded.)

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
BROWARD COUNTY, FLORIDA

(Caption Omitted In Printing)

SENTENCE ORDER

The Defendant, Dennis Sochor, was indicted on October 9, 1986 for the crimes of Murder In The First Degree in Count I and Kidnapping in Count II of the Indictment.

The case was tried before a duly empaneled jury commencing on October 13, 1987 and concluding on October 20, 1987. The jury, having heard the evidence and the law instructed by the Court, concluded the guilt phase of the trial by finding the Defendant guilty of First Degree Murder and of Kidnapping as charged in the Indictment.

On October 21, 1987, a separate proceeding on the issue of penalty was conducted before the same trial jury as mandated by the provisions of Florida Statutes 921.141(1). After hearing further testimony, argument of counsel, instructions by the Court, and due deliberations, the jury returned an advisory sentence of death by a vote of ten (10) to two (2).

Pursuant to the provisions of Florida Statute 921.141(3), the Court hereby makes the following findings of fact:

AGGRAVATING CIRCUMSTANCES

1. The Court finds, according to Florida Statute 921.141(5)(b), that the Defendant was previously convicted of another capital felony or

of a felony involving the use or threat of violence to another person. The Defendant was arrested on March 14, 1980 for Sexual Battery and Kidnapping. In *State of Florida vs. Dennis Paul Grant*, Case #80-2497-CF, the Defendant, Dennis Sochor, using the alias of Dennis Paul Grant, pled to Sexual Battery and was sentenced on September 30, 1980.

2. The Court finds, according to Florida Statute 921.141(5)(d), that the crime for which the Defendant is to be sentenced was committed while the Defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit any Sexual Battery or Kidnapping. The jury convicted the Defendant of Kidnapping in Count II of the Indictment. There is sufficient evidence to prove the victim was taken from the Banana Boat and at some point held against her will. She was forcibly dragged out of the truck as she resisted and pleaded for help. As to the attempt to commit Sexual Battery, the Defendant, from his own statements to law enforcement officers, indicated he wanted sex and when the victim refused him he became angry and the fight ensued. The Defendant said he had these urges for sex. Even though there is no evidence the Defendant actually sexually assaulted the victim as the body was never found, the Defendant's admissions prove the death occurred as he was attempting to sexually assault her. The Court finds that both of these felonies were committed or attempted to be committed but the Court considers this as only one aggravating circumstance.

3. The Court finds, according to Florida Statute 921.141(5)(h), that the capital felony was especially heinous, atrocious or cruel. The evidence indicated that the victim was forcibly removed from the truck while she pleaded for help and even begged for her life. Even though Patricia Gifford's body was never recovered and no one knows how badly she was beaten, the Defendant admitted in his statements that as he choked her she resisted and fought him. There were several fingernail marks on his face which substantiates that a violent struggle ensued as confirmed by the Defendant's statements to the police officers. Dr. Wright testified that asphyxiation is a slow and painful death. Fear and emotional trauma preceeding the victim's death may be considered as contributing to the heinous nature of the capital felony. It is clear there was fear and definitely emotional trauma before her death.

4. The Court finds, according to Florida Statute 921.141(5)(i), that the crime for which the Defendant is to be sentenced was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. The evidence indicated that the Defendant pulled the victim out of the pickup at night along an abandoned road and proceeded to strangle her. He disposed of the body so it could never be found. The Defendant had previously been put on probation for Sexual Battery and knew the consequences if the victim survived and notified the Police Department. There is no question that it was committed in a cold and

calculating manner as the Defendant told a witness who testified that he had choked someone to death in Fort Lauderdale, Florida and how easy it was to do. Furthermore, a cellmate testified that the Defendant had stated he had "killed the fucking slut bitch." There is no pretense of moral or legal justification.

MITIGATING CIRCUMSTANCES

1. The Defendant has no significant history of prior criminal activity. This mitigating circumstance does not apply. To the contrary, the Defendant has a most significant history of prior criminal activity. The Defendant admitted he had committed a rape in Michigan which case is still pending. According to the Doctors' report introduced in evidence and all of the testimony, it indicates a very significant history of criminal activity.

2. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance. This mitigating circumstance does not apply. The doctors who testified all found the Defendant competent and that he did not meet the criteria for involuntary hospitalization pursuant to the Baker Act. However, he was diagnosed as extremely dangerous and violent. Even though the Defendant claimed to the doctors he could not remember what happened, the Court finds as Dr. Castillo testified that the Defendant suffered from "selective amnesia" and attempted to mislead the doctors as to his recollections of the murderous incident.

3. The victim was a participant in the Defendant's conduct or consented to the act. This mitigating circumstance does not apply. The victim, Patricia Gifford, was a helpless and fearful 18 year old girl and in no way consented to this act.

4. The Defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor. This mitigating circumstance does not apply. All the evidence indicated that, even though the Defendant's brother was there, he attempted to stop the Defendant from committing this brutal murder.

5. The Defendant acted under extreme duress or under the substantial domination of another person. This mitigating circumstance does not apply.

6. The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. This mitigating circumstance does not apply. All the credible evidence indicates that the Defendant was able to appreciate the criminality of his conduct and was able to conform his conduct to the requirements of law if he so desired. He told a witness who testified during the trial, that he had choked someone in Fort Lauderdale, Florida and it was so easy that he could do it again. Even though the Defendant maintained he was intoxicated during the crime, the testimony from all the witnesses showed, though he may have had some alcoholic drinks, he was still in control of his actions and behavior and knew what

was happening. His ex wife testified that he acted violently even when he was not under the influence of alcohol.

7. The age of the Defendant at the time of the crime. This mitigating circumstance does not apply. The Defendant's birth date is February 25, 1952 and at the time of the crime he was twenty-nine (29) years old.

8. Any other aspect of the Defendant's character or record and any other circumstance of the offense. There were several members of the Defendant's family who tearfully and grievously testified. However, after considering their testimony, this Court finds no nonstatutory "mitigating" circumstances.

In Summary, it is the conclusion of the Court, after carefully and conscientiously weighing the aggravating and mitigating circumstances, that there are sufficient aggravating circumstances to justify and warrant the imposition of the death penalty and that there are no mitigating circumstances to outweigh the aggravating circumstances. It is, therefore,

THE SENTENCE OF THIS COURT that you, Dennis Sochor, be sentenced to death for the murder of Patricia Gifford.

It is further ordered that you, Dennis Sochor, be taken by the proper authorities to the Florida State Prison and be kept in close confinement until the day of your execution and that on that day you be put to death by electrocution, which is the manner prescribed by law, and may God have mercy on your soul.

You, Dennis Sochor, are hereby notified that the judgment of conviction and the sentence of death are subject to automatic review by the Supreme Court of Florida. You are further advised that you have the right to the assistance of counsel in the filing and preparation of your appeal. If you cannot afford your own attorney, you should advise the Court and an attorney will be appointed for you.

DONE AND ORDERED in open court, Broward County Courthouse, Fort Lauderdale, Florida, this 2 day of November, 1987.

/s/ Russell E. Seay, Jr.
HONORABLE RUSSELL E. SEAY, JR.
Circuit Court Judge

87455081

IN THE CIRCUIT COURT, SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

DIVISION FD R.E. SEAY, JR.

CASE NUMBER 86-15270CF

ST. ATTY. KELLY HANCOCK

CT. RPTR. PATTY JENNINGS

STATE OF FLORIDA

-vs-

Dennis Sochor
Defendant

JUDGMENT

The Defendant, Dennis Sochor, being personally before this Court represented by Charles Rich, his attorney of record, and having:

(Check Applicable Provision)

■ Been tried and found guilty of the following crime(s)

___Entered a plea of guilty to the following crime(s)

___Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME
I	MURDER FIRST DEGREE

OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
782.04(1)	CF	
787.01	LF	

and no cause having been shown why the Defendant should not be adjudicated guilty. IT IS ORDERED THAT the Defendant hereby ADJUDICATED GUILTY of the above crime(s)

The Defendant is hereby ordered to the sum of twenty dollars ($20.00) waive costs pursuant to F.S.960.20 (Crimes Compensation Trust fund. The Defendant is further ordered to pay the sum of five dollars ($5.00) as a court cost pursuant to F.S.943.25(4).

___ The Defendant is ordered to pay an additional sum of two dollars ($2.00) pursuant to F.S.943.25(8). (This provision is optional: not applicable unless checked).

(Check if Applicable)

___ The Defendant is further ordered to pay a fine in the sum of $ _____ pursuant to F.S. 775.0835.

(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).

___ The Court hereby imposes additional court costs in the sum of $ _____

Imposition of Sentence Stayed and Withheld *(Check if Applicable)*

___ The Court hereby stays and withholds the imposition of sentence as to count(s) _____

and places the Defendant on probation for a period of _____

under the supervision of the Department of Corrections (conditions of probation set forth in separate order.)

Sentence Deferred Until Later Date Waive *(Check if Applicable)*

■ The Court hereby defers imposition of sentence until Nov. 2, 1987.

(date)

___ Pay $200.00 Trust Fund Pursuant to F.S.27.3455

___ Serve 50.3 hours Community Service Pursuant to F.S.27.3455

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

COUNT(S) ___:___ DAYS BROWARD CO. JAIL

WITH CREDIT FOR ___ DAYS TIME SERVED.

/s/ Illegible
JUDGE

(Fingerprints Omitted In Printing)

/s/ A. Piazza, COURT DEPUTY
Name and Title

DONE AND ORDERED in Open Court at Broward County, Florida this 21 day of OCTOBER A.D., 1987. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, DENNIS SOCHOR and that they were placed thereon by said Defendant in my presence in Open Court this date.

1227

/s/ Illegible
JUDGE

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
L. A. HESTER
COUNTY ADMINISTRATOR

Defendant DENNIS SOCHOR aka DENNIS GRANT

Case Number 86-1527OCF

SENTENCE

(As to Count I)

The Defendant, being personally before this Court accompanied by his attorney, CHARLES RICH, S.P.D., and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

XXX and the Court having on OCT. 21, 1987 (date) deferred imposition of sentence until this date.

(Check either provision if applicable) ___ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that;

___ The Defendant pay a fine of $___, plus $___ as the 5% surcharge required by F.S. 960.25.

XXX The Defendant is hereby committed to the custody of the Department of Corrections

___ The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida *(Name of local corrections authority to be inserted at printing, if other than Sheriff)*

To be imprisoned (check one; unmarked sections are inapplicable)

___ For a term of Natural Life

XXX For a sentence of Death by Electrocution

___ For an indeterminate period of 5 months to ___ years.

___ Followed by period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete either of these two paragraphs ___ However, after serving a period of _____ imprisonment in ____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm – 3 year mandatory minimum ___ it is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking – mandatory minimum — It is further ordered that the _____ year minimum provisions of F.S.893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction — The Court pursuant to F.S.947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender — The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S.775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit XXX It is further ordered that the Defendant shall be allowed total of ONE YEAR & 157 DAYS credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/ Concurrent It is further ordered that the sentence imposed for this count shall run _____ consecutive to _____ concurrent with (check one) the sentence set forth in count _____ above.

CC1-3

Page 1 of 2

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Defendant DENNIS SOCHOR aka DENNIS GRANT

Case Number 86-1527OCF

SENTENCE

(As to Count II)

The Defendant, being personally before this Court accompanied by his attorney, CHARLES RICH, S.P.D., and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

XXX and the Court having on OCT. 21, 1987 (date) deferred imposition of sentence until this date.

(Check either provision if applicable) — and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that;

— The Defendant pay a fine of $___, plus $___ as the 5% surcharge required by F.S. 960.25.

XXX The Defendant is hereby committed to the custody of the Department of Corrections

___ The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida *(Name of local corrections authority to be inserted at printing, if other than Sheriff)*

To be imprisoned (check one; unmarked sections are inapplicable)

___ For a term of Natural Life

XXX For a term of TWENTY TWO (22) YEARS

___ For an indeterminate period of 6 months to ____ years.

___ Followed by period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete either of these two paragraphs

___ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm – 3 year mandatory minimum

___ it is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking – mandatory minimum

___ It is further ordered that the _____ year minimum provisions of F.S.893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

___ The Court pursuant to F.S.947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

___ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S.775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

XXX It is further ordered that the Defendant shall be allowed total of ONE YEAR & 157 DAYS credit for such time as he has been incarcerated prior to imposition

of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/ Concurrent It is further ordered that the sentence imposed for this count shall run ___ consecutive to XX concurrent with (check one) the sentence set forth in count I above.

Consecutive/ Concurrent (As to other convictions) It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ___ consecutive to XX concurrent with (check one) the following:

___ Any active sentence being served.

XXX Specific sentences: 80-2497CF & 82-198CF

In the event the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant *in Open* Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends WAIVE ALL COSTS.

DONE AND ORDERED in Open Court at Broward County, Florida, this 2 day of NOVEMBER A.D, 1987.

BROWARD COUNTY, FLORIDA

/s/ Illegible
JUDGE

cf-3
1238

SUPREME COURT OF FLORIDA

No. 71,407

DENNIS SOCHOR, Appellant,

v.

STATE OF FLORIDA, Appellee.

[May 2, 1991]

PER CURIAM.

Dennis Sochor appeals his convictions of kidnapping and first-degree murder and sentence of death. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. We affirm the convictions and the death sentence.

Testimony at trial established that, on December 31, 1981, the victim, an eighteen-year-old female, and a friend went to a lounge located in Broward county to celebrate New Year's Eve. During the course of the evening the friend became ill. Sochor and his brother, Gary, helped the victim escort her friend outside to her car. Promising her that she would return soon, the victim returned to the lounge.

Early the next morning the friend awoke in the car, discovered the victim missing, and called the police. The police obtained a photograph taken that night which showed an unidentified man sitting at the bar near the victim. The photograph was shown on television, and, several days later, that man was identified as Sochor. The police talked with Sochor's roommates who said that he had left suddenly when he saw his picture on television.

They also told police that Sochor's brother, Gary, had been visiting him and had recently returned to Michigan. The police interviewed Gary who implicated his brother in the victim's disappearance and voluntarily returned to Florida to attempt to locate her body. In May 1986 authorities arrested Sochor in Georgia on an unrelated offense and extradited him to Florida where a grand jury indicted him on charges of first-degree murder and kidnapping. The victim's body has never been recovered.

At trial Gary gave the following testimony. He went to the lounge on New Year's Eve with his brother who spent the evening talking with the victim and her friend. When it came time to leave, the victim and his brother were kissing in the lounge parking lot while Gary waited in the truck. Several minutes later, she agreed to go to breakfast with them. They left the parking lot with Sochor driving his employer's truck, Gary in the passenger seat, and the victim seated between them. Sochor drove to a secluded spot nearby and stopped the truck. Gary remembered the victim screaming for help and seeing Sochor on top of her with her hands pinned down on the ground. He yelled at him and threw a rock over his head. In response Sochor stopped assaulting the victim, turned and looked at Gary like a man "possessed," angrily told him to get back in the truck, and resumed his assault. Awhile later Sochor got in the truck with Gary and drove home. The next morning Gary found a woman's shoe and sweater and a set of keys in the truck. He hid the keys. Later he noticed that the truck had been cleaned and the articles removed. When told about the keys, Sochor became upset and demanded their return,

which Gary did. A few days later Gary returned to Michigan.

The state also introduced Sochor's three taped confessions which it played to the jury. In these statements Sochor said that he met the victim that night at the bar and spent the evening talking with her. He remembered kissing her in the lounge parking lot and wanting to have sex. When she refused, they argued and he grabbed her. When she hit him, he became angry and choked her. He thought that he killed her and drove to a secluded area where he disposed of the body. He said that Gary was not with him when this happened. When he awoke the next morning, he remembered feeling that something terrible had happened. He thought he had raped "another girl." He also stated that he found several woman's articles in the truck which he put in the trash. When he saw his picture on television, he took his employer's truck and drove to Tampa.[1] From there he went to New Orleans where he stayed for some time before moving to Atlanta where he was arrested.

The jury convicted Sochor of both kidnapping and first-degree murder and, by a vote of ten to two, recommended the death penalty. The trial judge sentenced Sochor to death, finding four aggravating,[2] and no

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[1] Several weeks after the victim's disappearance police found the truck abandoned in Tampa.

[2] The court found the following aggravating factors: (1) Sochor was previously convicted of a felony involving the use or threat of violence to the person, § 921.141(5)(b), Fla. Stat.

(Continued on following page)

mitigating, circumstances. Sochor now appeals, claiming errors in both the guilt and sentencing phases of his trial.

Sochor raises numerous claims of error in the guilt phase. His first claim is that there was insufficient evidence to convict him of either premeditated or felony murder.[3] Assuming that there are sufficient facts to present the issue to the jury, whether the evidence shows premeditation is a question of fact for the jury to decide. *Preston v. State*, 444 So.2d 939 (Fla. 1984). As this Court has previously stated:

> Evidence from which premeditation may be inferred includes such matters as the nature of the weapon used, the presence or absence of adequate provocation, previous difficulties between the parties, the manner in which the homicide was committed, and the nature and manner of the wounds inflicted. It must exist for such time before the homicide as will enable the accused to be conscious of the nature of the deed he is about to commit and the probable result to flow from it in so far as the life of his victim is concerned. No definite length of time

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(Continued from previous page)

(1989); (2) the killing was committed while Sochor was engaged in the commission of a felony, § 921.141(5)(d); (3) the killing was especially heinous, atrocious, or cruel, § 921.141(5)(h); and (4) the killing was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification, § 921.141(5)(i).

[3] The verdict form did not indicate whether the jurors found Sochor guilty of first-degree murder based on premeditation or felony murder. Defense counsel neither requested such a specialized jury verdict form nor is one required. Brown v. State, 473 So.2d 1260 (Fla.), *cert. denied*, 474 U.S. 1038 (1985).

> for it to exist has been set and indeed could not be.

Larry v. State, 104 So.2d 352, 354 (Fla. 1958). *Accord Preston; Sireci v. State*, 399 So.2d 964 (Fla. 1981), *cert. denied*, 456 U.S. 984 (1982).

After examining the record, we find sufficient evidence to present the issue of premeditation to the jury and from which the jury could have found premeditation. In addition to the circumstances of the crime, Gary testified that, while the victim screamed for help, he interrupted Sochor who stopped assaulting her long enough to turn, look at Gary, and shout at him to get back in the truck. Sochor then resumed his attack. Thus, he had a sufficient period of reflection to contemplate the nature of his act. He could have stopped his assault at that point but chose to continue. We find Sochor's claim that the offense was a heat-of-passion type homicide insufficient to preclude a finding of premeditation.

We also find sufficient evidence of kidnapping to support Sochor's conviction on a felony-murder theory.[4] The evidence adduced at trial shows that, although the victim may have entered the truck voluntarily, at some point she was held unwillingly. Her removal from the lounge parking lot to a secluded area facilitated Sochor's acts, avoided detection, and was not merely incidental to, or inherent in, the crime. Thus, the evidence supports the

[4] The court instructed the jury that it could find felony murder based on the felonies of kidnapping or sexual battery, attempt to commit either crime, or escaping from the immediate scene of a kidnapping or sexual battery.

underlying felony of kidnapping as well as Sochor's separate conviction of kidnapping. *See Carron v. State*, 427 So.2d 192 (Fla. 1983); *Faison v. State*, 426 So.2d 963 (Fla. 1983); *Mobley v. State*, 409 So.2d 1031 (Fla. 1982).[5]

Sochor next claims that the trial court improperly admitted his confessions because the state did not independently prove the corpus delicti of the homicide. An individual's confession to a crime is insufficient evidence of a criminal act where no independent evidence exists to substantiate the occurrence of the crime. *State v. Allen*, 335 So.2d 823 (Fla. 1976). Because the victim's body has never been found, Sochor contends that the state has no evidence, other than his confession, that she is dead. In proving corpus delicti, however, circumstantial evidence is sufficient. *Buenoano v. State*, 527 So.2d 194 (Fla. 1988). Proof beyond a reasonable doubt is not necessary. *Stano v. State*, 473 So.2d 1282 (Fla. 1985), *cert. denied*, 474 U.S. 1093 (1986); *Bassett v. State*, 449 So.2d 803 (Fla. 1984). The victim disappeared New Year's Eve and has not been seen since that night. It was uncharacteristic for her not to come home. She had a good relationship with her family and her boyfriend and kept in touch. None of her belongings were missing from her apartment. Gary testified that when he last saw the victim she was screaming for help with his brother on top of her. We find sufficient evidence that the victim is indeed dead and that her

[5] We also find sufficient evidence in the record to support the underlying felony of attempted sexual battery. Sochor stated that he wanted to have sex with the victim and that he felt an uncontrollable urge to do so. The next day he thought he had raped "another girl." Gary testified that he saw Sochor on top of the victim while she resisted.

death was due to the criminal agency of Dennis Sochor. Moreover, Sochor, in closing argument, did not contest the fact that she was dead. Rather, counsel based the defense strategy on the theories of voluntary intoxication or mistaken identity, i.e., that Gary actually committed the crime.[6]

Sochor next complains of various errors which, taken as a whole, led to an unfair trial. He acknowledges that counsel did not object at trial to any of the complained-of errors and, pursuant to the contemporaneous objection rule, they are not preserved for review. *See Wainwright v. Sykes*, 433 U.S. 72 (1977); *Jones v. State*, 449 So.2d 253 (Fla.), *cert. denied*, 469 U.S. 893 (1984). Despite the lack of objections, Sochor contends that (1) the trial was so unfair that fundamental error occurred and (2) the contemporaneous objection rule has less force in a capital case. This Court has previously rejected the second argument. *Rose v. State*, 461 So.2d 84 (Fla. 1984), *cert. denied*, 471 U.S. 1143 (1985); *see Pope v. Wainwright*, 496 So.2d 798 (Fla. 1986), *cert. denied*, 480 U.S. 951 (1987); *Jones v. Wainwright*, 473 So.2d 1244 (Fla. 1985).

As to the first argument, fundamental error occurs in cases "where a jurisdictional error appears or where the interests of justice present a compelling demand for its application." *Ray v. State*, 403 So.2d 956, 960 (Fla. 1981). The error must amount to a denial of due process. *Ray; Castor v. State*, 365 So.2d 701 (Fla. 1978). After carefully

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[6] Sochor also contends there was insufficient evidence of venue and that the state failed to prove his sanity at the time of the offense beyond a reasonable doubt. We find these claims without merit.

reviewing the record, we find that the claimed errors, taken individually or collectively, do not constitute fundamental error.[7] Thus, we reject Sochor's claim.

Likewise, although Sochor now claims various errors in the jury instructions, his counsel neither objected to the challenged instructions nor requested other instructions. Thus, in the absence of fundamental error, these claims also are precluded from appellate review. *See Adams v. State*, 412 So.2d 850 (Fla.), *cert. denied*, 459 U.S. 882 (1982); *Castor*. Some of Sochor's claims on this issue merit no discussion;[8] however, others require inquiry.

We first examine Sochor's argument that the trial court committed fundamental error by failing to instruct the jury on voluntary intoxication as a defense to felony murder based on kidnapping. Voluntary intoxication is a defense to felony murder when the underlying felony is a specific-intent crime. *Linehan v. State*, 476 So.2d 1262 (Fla.

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[7] Sochor contends that the following were fundamental error: (1) prosecutorial comments on facts outside the evidence; (2) opinions of government witnesses as to Sochor's veracity and guilt; (3) a defense witness's statement on cross-examination that an individual from the prosecutor's office compared Sochor to Ted Bundy; (4) arguments by the state that Sochor's trial was the only time the state could try him for his crimes; (5) other evidence of Sochor's bad character, the victim's good character, beauty, and family; and (6) perjured testimony by a jailhouse informant as to whether he received leniency from the state in return for his testimony regarding Sochor's incriminating statements.

[8] We reject without discussion Sochor's claims that the trial court fundamentally erred by failing to properly instruct the jury as to: nondeath lesser-included offenses; manslaughter; third-degree murder; and kidnapping.

1985). Kidnapping is a specific-intent crime. *Heddleson v. State*, 512 So.2d 957 (Fla. 4th DCA 1987); *Mullin v. State*, 425 So.2d 219 (Fla. 2d DCA 1983); *see* § 787.01, Fla. Stat. (1989). Although the trial court instructed the jury that voluntary intoxication was a defense to premeditated murder, it did not so instruct the jury with regard to felony murder.

Fundamental error is error which goes to the foundation of the case. *Sanford v. Rubin*, 237 So.2d 134 (Fla. 1970). Failure to give an instruction unnecessary to prove an essential element of the crime charged is not fundamental error. Voluntary intoxication is a defense to, but not an essential element of, kidnapping. Therefore, the state did not have to disprove voluntary intoxication in order to convict Sochor of felony murder based on the underlying felony of kidnapping. Because the complained-of instruction went to Sochor's defense and not to an essential element of the crime charged, an objection was necessary to preserve this issue on appeal. Moreover, there was sufficient evidence of attempted sexual battery, a general-intent crime to which voluntary intoxication is not a defense,[9] upon which to base a conviction of felony murder. Sochor's claim as to this point therefore fails.

We also address Sochor's argument that the trial court fundamentally erred by failing to instruct the jury on the statute of limitation as an absolute defense to felony murder and kidnapping. This, too, is a defensive matter that must be raised at trial. Had it been raised, the state could have shown that, even though Sochor was

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[9] Buford v. State, 492 So.2d 355 (Fla. 1986).

indicted for kidnapping beyond the applicable four-year limitation period, his undisputed, continuous absence from the state tolled the running of the statute. *See* § 775.15(6), Fla. Stat. (1989). Thus, the trial court did not commit fundamental error by failing to instruct the jury in this regard. In addition, capital crimes are not subject to a statute of limitation. § 775.15(1), Fla. Stat. (1989). Hence, Sochor's argument that his murder conviction must be overturned and remanded for a new trial because the limitation period had expired on several of the underlying felonies supporting a possible felony-murder theory is untenable.

Finally, we recently held that the failure to give the long-form excusable homicide instruction is not fundamental error. *State v. Smith*, 573 So.2d 306 (Fla. 1990). Sochor's claim as to this point thereby fails.

Our review of the record shows competent, substantial evidence to support Sochor's convictions of kidnapping and first-degree murder. We therefore affirm those convictions.

Turning to the penalty phase, Sochor's first claim is that the trial court improperly allowed the state to present and argue nonstatutory aggravating circumstances. To begin with, Sochor contends that the state introduced victim impact evidence in violation of *Booth v. Maryland*, 482 U.S. 496 (1987). Sochor's *Booth* claim is predicated upon prosecutorial comments and arguments to which no objection was made. To preserve a *Booth* issue an objection must be made. In our view, had there been an objection, it would not have been sustained. Thus, this issue is procedurally barred and lacks substance. *Parker v. Dugger*,

550 So.2d 459 (Fla. 1989); *Jackson v. Dugger*, 547 So.2d 1197 (Fla. 1989).

Sochor also contends that the state presented evidence of his lack of remorse, an improper aggravating circumstance. *Pope v. State*, 441 So.2d 1073 (Fla. 1983). After reviewing the record, we find that the prosecutor's comments during closing argument in their totality did not rise to such a level as to pinpoint lack of remorse or warrant a new sentencing trial. *See Bertolotti v. State*, 476 So.2d 130 (Fla. 1985).

Sochor further contends that the state introduced improper evidence of prior violent acts through the testimony of his ex-wife, Patricia Neal, and introduced improper hearsay testimony of, and his taped confession to, a rape in Michigan of which there was no conviction. In neither instance did Sochor's counsel object to the testimony, and these points are therefore procedurally barred. Moreover, Ms. Neal's testimony was introduced to rebut Sochor's defense that he became violent only after consuming alcohol; she testified to violent acts by Sochor when he was sober. The testimony regarding the Michigan rape was relevant to rebut the mitigating factor of no significant history of prior criminal activity. The playing of Sochor's taped confession during the penalty phase did not violate *Rhodes v. State*, 547 So.2d 1201 (Fla. 1989). Thus, we find no error in these claims. Lastly, Sochor's claim of error with regard to improper prosecutorial comments on this evidence during closing argument has no merit.

Sochor's next claim, regarding alleged errors in the penalty jury instructions, likewise must fail. None of the

complained-of jury instructions were objected to at trial, and, thus, they are not preserved for appeal. *Vaught v. State*, 410 So.2d 147 (Fla. 1982). In any event, Sochor's claims here have no merit.[10]

Sochor also claims that the prosecutor and trial court denigrated the jury's role in violation of *Caldwell v. Mississippi*, 472 U.S. 320 (1985). Florida's standard jury instructions fully advise the jury of the importance of its role and do not violate *Caldwell*. *Combs v. State*, 525 So.2d 853 (Fla. 1988); *Grossman v. State*, 525 So.2d 833 (Fla. 1988), *cert. denied*, 489 U.S. 1071 (1989). Further, Sochor did not raise this claim at trial. Thus, it has not been preserved for review. *Combs; Jackson v. State*, 522 So.2d 802 (Fla.), *cert. denied*, 488 U.S. 871 (1988).

Turning to the actual sentence, Sochor claims that the evidence did not support three of the four aggravating

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[10] Sochor contends that the felony-murder instruction was inadequate because it did not define the underlying felony and did not inform the jury that this aggravating circumstance was only applicable to premeditated murder. We reject this claim because the court instructed the jury on the underlying felonies during the guilt phase and because this aggravating circumstance is applicable to both felony murder and premeditated murder. White v. State, 403 So.2d 331 (Fla. 1981), *cert. denied*, 463 U.S. 1229 (1983). We reject without discussion Sochor's other claims: that the instructions as to the aggravating factors of heinous, atrocious, or cruel and cold, calculated, and premeditated were improper; that the instructions as to statutory and nonstatutory mitigating evidence were improper; that the jury was improperly instructed as to the burden and standard of proof with regard to mitigating circumstances; and that Florida's sentencing scheme carries a presumption of death upon the finding of a single aggravating factor.

factors found by the trial court. He does not contest the finding of a previous conviction of a violent felony, and we find this aggravator supported by the record. Sochor does contest the finding that the murder was committed during a felony. We have already found sufficient evidence of both kidnapping and attempted sexual battery. Thus, the evidence supports this aggravating factor.

The evidence also supports finding that the murder was especially heinous, atrocious, or cruel. Fear and emotional strain can contribute to the heinousness of the murder. *Adams*, 412 So.2d at 857. Gary testified that the victim screamed for help after she was dragged from the truck and scratches on Sochor's face indicate that a struggle took place. The evidence supports the conclusion of horror and contemplation of serious injury or death by the victim. Moreover, Sochor confessed that he choked the victim to death. It can be inferred that "strangulation, when perpetrated upon a conscious victim, involves foreknowledge of death, extreme anxiety and fear, and that this method of killing is one to which the factor of heinousness is applicable." *Tompkins v. State*, 502 So.2d 415, 421 (Fla. 1986) (citations omitted), *cert. denied*, 483 U.S. 1033 (1987). *Accord Johnson v. State*, 465 So.2d 499 (Fla.), *cert. denied*, 474 U.S. 865 (1985); *Doyle v. State*, 460 So.2d 353 (Fla. 1984). The trial court properly found this aggravating factor.

We disagree, however, that the murder was committed in a cold, calculated, and premeditated manner. Although there was sufficient evidence to support a premeditated murder conviction, this aggravator requires a "heightened" level of premeditation. *Hamblen v. State*, 527 So.2d 800 (Fla. 1988). The evidence introduced at trial

failed to demonstrate this requisite heightened level of premeditation. Rather, the killing most likely resulted from the victim's refusal to have consensual sex with Sochor and her resistance when he attempted to force himself upon her.

Sochor argues that the court should have found as mitigating factors that he was under the influence of extreme mental or emotional disturbance and that his capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of law was substantially impaired. In proof he relies on evidence of his alcohol use the night in question and on doctors' testimony that he was a dangerous and violent person when drinking. Sochor is an admitted rapist. As testified to by his ex-wife and the victim of a prior rape, when they declined to accede to Sochor's requests for sex he became violent. He himself explains that, when sexually aroused, an indescribable feeling comes over him in the form of an irresistible impulse, particularly when drinking. It is difficult to discern whether such conduct is mitigating, but the decision as to whether a particular mitigating circumstance is proven lies with the judge and jury. Reversal is not warranted simply because the appellant arrives at a different conclusion. *Stano v. State*, 460 So.2d 890 (Fla. 1984), *cert. denied*, 471 U.S. 1111 (1985). Although several doctors testified as to Sochor's mental instability, one testified that Sochor had not been truthful during testing and another testified that Sochor had "selective amnesia." While the sentencing order mentioned that Sochor had been found competent to stand trial and did not require Baker Act hospitalization, it is clear from the record that this is not the standard the

court used in sentencing Sochor. We see no reason to disturb the court's rejection of these mitigating factors.

Sochor also argues that the trial court failed to consider and improperly excluded nonstatutory mitigating evidence. The court in its sentencing order stated "[t]here were several members of the Defendant's family who tearfully and grievously testified. However, after considering their testimony, this Court finds no nonstatutory 'mitigating' circumstances." This testimony related Sochor's physical abuse by his father, his financial support of the family when his father was unable to work, his alcohol problems, and his violent temper and mental instability. The trial judge considered the evidence of family and personal history, but determined it was so insignificant that it had not been established as a mitigating circumstance. Deciding whether such family history establishes mitigating circumstances is within the trial court's discretion. *King v. Dugger*, 555 So.2d 355 (Fla. 1990); *Scull v. State*, 533 So.2d 1137 (Fla. 1988), *cert. denied*, 490 U.S. 1037 (1989). We find no abuse of discretion in finding that the evidence did not rise to being a mitigating circumstance.

We also disagree with Sochor's claim that his death sentence is disproportionate. The trial court carefully weighed the aggravating factors against the lack of any mitigating factors and concluded that death was warranted. Even after removing the aggravating factor of cold, calculated, and premeditated there still remain three aggravating factors to be weighed against no mitigating circumstances. Striking one aggravating factor when there are no mitigating circumstances does not necessarily require resentencing. *Robinson v. State*, 574 So.2d

108 (Fla. 1991); *Holton v. State*, 573 So.2d 284 (Fla. 1990); *James v. State*, 453 So.2d 786 (Fla.), *cert. denied*, 469 U.S. 1098 (1984); *Francois v. State*, 407 So.2d 885 (Fla. 1981), *cert. denied*, 458 U.S. 1122 (1982). Under the circumstances of this case, and in comparison with other death cases, we find Sochor's sentence of death proportionate to his crime. *E.g., Hitchcock v. State*, no. 72,200 (Fla. Dec. 20, 1990); *Tompkins; Doyle*.

Finally, we have previously rejected claims that Florida's sentencing process is unconstitutional. *Young v. State*, no. 72,106 (Fla. Feb. 28, 1991); *Gunsby v. State*, 574 So.2d 1085 (Fla. 1991); *Van Poyck v. State*, 564 So.2d 1066 (Fla. 1990).

We therefore affirm the convictions of kidnapping and first-degree murder and the death sentence.

It is so ordered.

SHAW, C.J., and OVERTON, McDONALD, BARKETT, GRIMES and KOGAN, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

SUPREME COURT OF FLORIDA

TUESDAY, JUNE 18, 1991

DENNIS SOCHOR, Appellant,	*	CASE NO. 71,407
v.	*	Circuit Court No. 86-15270CF-10 (Broward)
STATE OF FLORIDA, Appellee.	*	

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Appellant's Motion for Rehearing filed in the above cause is hereby denied.

SHAW, C.J., OVERTON, McDONALD, BARKETT, GRIMES and KOGAN, JJ., concur

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SUPREME COURT OF THE UNITED STATES

No. 91-5843

Dennis Sochor,

Petitioner

v.

Florida

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Florida.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Questions 2 and 4 presented by the petition.

November 18, 1991